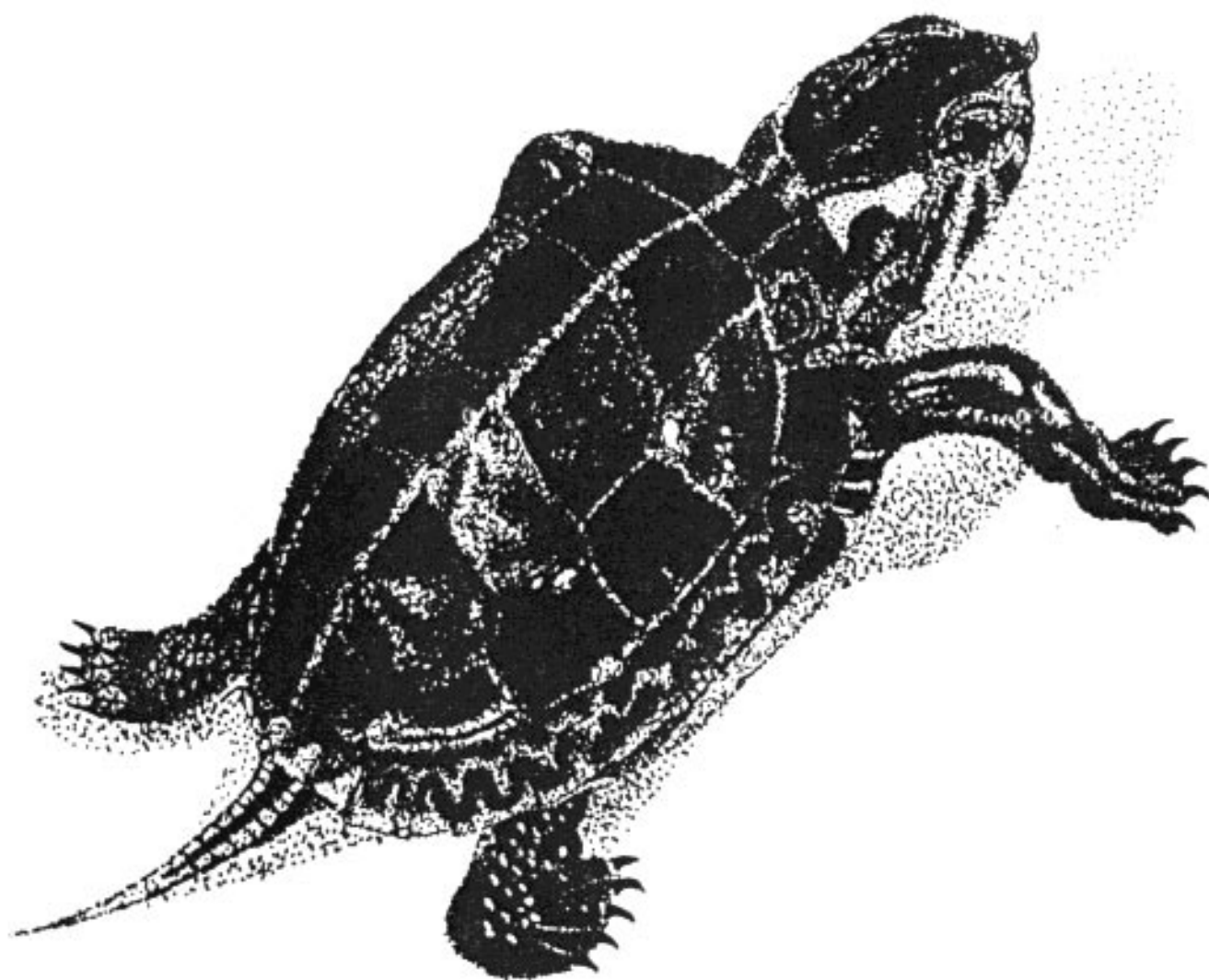


TEXAS REGISTER

Volume 22 Number 59 August 8, 1997

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Artist: *Robyn Phillips*

9th Grade

Grand Prairie High School

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ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042 and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the ***Texas Register***. The Attorney General responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. To request copies of opinions, phone (512) 462-0011. To inquire about pending requests for opinions, phone (512) 463-2110.

Letter Opinion

LO-97-066 (RQ-841.) Regarding whether the Texas Hazard Communication Act, chapter 502, Health and Safety Code, which provides "employees" with accessibility to certain information regarding hazardous chemicals at work sites, is applicable to inmates of the Texas Department of Criminal Justice.

SUMMARY Prisoners of the Texas Department of Criminal Justice are not "employees" for the purposes of the Texas Hazard Communication Act, Health and Safety Code chapter 502.

TRD-9709965



Request for Opinions

RQ-947. Request from Mr. Andrew Sansom, Executive Director, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, concerning authority of the Franklin County Water District to require a permit to operate as a fishing guide on Lake Cypress Springs.

RQ-948. Request from Mr. Andrew Sansom, Executive Director, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, concerning whether the Texas Water Safety Act, chapter 31 of the Parks and Wildlife Code, applies to Lake Cherokee.

RQ-949. Request from the Honorable Barry L. Macha, Wichita County Criminal District Attorney, 900 Seventh Street, Wichita Falls, Texas 76301-2482, concerning whether state aid to a community corrections facility may be used on behalf of an individual confined for contempt of court.

RQ-950. Request from the Honorable John Vance, Dallas County Criminal District Attorney, 411 Elm Street, Administration Building Dallas, Texas 75202, concerning Instruments which a county clerk must accept for filing.

RQ-951. Request from Brigadier General Daniel James, Adjutant General, Adjutant General's Department, P.O. Box 5218, Austin, Texas 78763-5218, concerning whether the Texas National Guard is subject to the Hazard Communication Act, chapter 502 of the Health and Safety Code.

RQ-952. Request from the Honorable Steven D. Wolens, Chair, Committee on State Affairs, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning validity of Dallas City Council rule that requires request by five council members or majority of a city council committee to place items on agenda for council meeting.

TRD-9709966



TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Requests

AOR-412. The Texas Ethics Commission has been asked whether a judicial candidate or officeholder may use political contributions to repay himself with interest for political expenditures from personal funds.

AOR-413. The Texas Ethics Commission has been asked whether a partnership that has a corporate partner may make a political contribution if the partnership does not allocate any amount of the contribution to the partnership account of the corporate partner and also whether limited liability companies may make political contributions.

Issued in Austin, Texas, on July 30, 1997.

TRD-9709936

Tom Harrison

Executive Director

Texas Ethics Commission

Filed: July 31, 1997

◆ ◆ ◆

Ethics Advisory Opinion

EAO-371. Questions regarding the application of Chapter 572 of the Government Code to a legislator's representation of clients in the legislator's private legal practice. (AOR-407)

SUMMARY. A legislator may not represent a person for compensation before a state agency in the executive branch unless the representation (1) is made in a proceeding that is adversary in nature or in another public hearing that is a matter of record or (2) involves only ministerial acts on the part of the agency. Beginning on September 1, 1997, a legislator representing a person for compensation before a state agency will be required to disclose to the agency the fact that the legislator is receiving compensation for the representation.

A legislator who represents a person for compensation before an executive state agency must report the name of the agency, the name of the person represented, and the category of the amount of compensation on his or her personal financial statement.

Issued in Austin, Texas, on July 24, 1997.

TRD-9710010

Tom Harrison

Executive Director

Texas Ethics Commission

Filed: August 1, 1997

◆ ◆ ◆

EMERGENCY RULES

An agency may adopt a new or amended section or repeal an existing section on an emergency basis if it determines that such action is necessary for the public health, safety, or welfare of this state. The section may become effective immediately upon filing with the ***Texas Register***, or on a stated date less than 20 days after filing and remaining in effect no more than 120 days. The emergency action is renewable once for no more than 60 additional days.

Symbology in amended emergency sections. New language added to an existing section is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a section.

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 85. Admission and Placement

Subchapter B. Placement Planning

37 TAC §85.29

Texas Youth Commission (TYC) adopts on an emergency basis the repeal of §85.29 concerning program completion and movement. The section is being repealed to allow for the emergency adoption of a new section which will implement requirements in House Bill 1550, applicable sections passed by the 75th Legislative Session, and effective on June 19, 1997.

The repeal is adopted on an emergency basis to implement requirements in House Bill 1550, applicable sections passed by the 75th Legislative Session, and effective on June 19, 1997.

The repeal is adopted on an emergency basis under the Human Resources Code, §61.077 which provides the Texas Youth Commission authority to discharge children with mental illness or mental retardation and §61.0772, which provides the Texas Youth Commission authority to examine youth before discharge.

The repeal implements the Human Resource Code, §61.034.

§85.29. Program Completion and Movement.

Issued in Austin, Texas, on July 28, 1997.

TRD-9709778

Steve Robinson

Executive Director

Texas Youth Commission

Effective date: August 1, 1997

Expiration date: December 1, 1997

For further information, please call: (512) 424-6244



Texas Youth Commission (TYC) adopts on an emergency basis new §85.29, concerning program completion and movement. The section provides criteria and procedures whereby the agency will move youth in custody from their assigned placement to a placement of more or less restriction. This current section is being repealed and published as new to make several language adjustments to include criteria for discharging from

custody a youth who is mentally ill or mentally retarded if the youth has completed the minimum length of stay and is unable to progress in the Commission's rehabilitation programs because of the youth's mental illness or mental retardation. Certain other youth may be transferred to TYC placement of less restriction than the TYC placement to which they are currently assigned under criteria herein.

The section is adopted on an emergency basis to implement requirements in House Bill 1550, applicable sections passed by the 75th Legislative Session, and effective on June 19, 1997.

The section is adopted on an emergency basis under the Human Resources Code, §61.077 which provides the Texas Youth Commission authority to discharge children with mental illness or mental retardation and §61.0772, which provides the Texas Youth Commission authority to examine youth before discharge.

The adopted rule implements the Human Resource Code, §61.034.

§85.29. Program Completion and Movement.

(a) Purpose. The purpose of this rule is to provide criteria and a process whereby staff may determine when a youth including a sentenced offender has completed a program, is eligible to be moved to another program, released home, placed on parole status, or be transferred to the Department of Criminal Justice.

(b) Applicability.

(1) This rule does not address all types of disciplinary movements. See Chapter 95, Subchapter A of this title (relating to on Disciplinary Practices).

(2) Additional procedures and restrictions are applied prior to any movement of a sentenced offender youth. See (GAP), §85.37 of this title (relating to Sentenced Offender Disposition).

(3) This rule does not apply to movement for strictly treatment reasons.

(c) Explanation of Terms Used.

(1) Program completion criteria - all of the criteria which a youth must meet while in the current program in order to move to an equal or lesser level of restriction.

(2) Disciplinary movement - a movement to equal or more restriction as a disciplinary consequence if found during appropriate due process. A disciplinary movement may or may not be accompanied by a new minimum length of stay requirement. There

are several types of disciplinary movement consequences. These movements are subject to policies in this chapter and in Chapter 95, Subchapter A of this title (relating to Disciplinary Practices). For restriction levels see (GAP), §85.27 of this title (relating to Program Restriction Levels).

(3) Administrative transfer - a lateral movement, i.e., a movement from one program to another program within the same restriction level for an administrative purpose. Purposes may include but are not limited to proximity to a youth's home, specific treatment needed becomes available, appropriateness of placement due to education needs, age, etc.

(4) Transition movement - also referred to as "a transition", any movement from one assigned program site to another as a result of a youth's progress toward meeting the program completion criteria of his/her program. Transition is always to placement of equal or less restriction than that of the current placement. Transition is not type of placement or a status.

(5) Parole Status - a status assigned to a youth when criteria have been met. The status assures that a youth, having parole status, shall not be moved into a placement of high restriction without a level I hearing. A youth either earns parole status or is granted parole status under specific conditions.

(6) High risk offense - any major rule violation which may result in a classification other than general offender or violator of CINS probation.

(d) Program Completion Processes.

(1) Program staff will explain completion criteria to every youth during orientation to each placement.

(2) Prior to a transition movement, a youth may request and in doing so will be granted a level II hearing.

(3) TYC shall not accept the presence of a detainer as an automatic bar to earned release. The agency shall release a youth to authorities pursuant to a warrant.

(4) Progress toward successful completion of criteria shall be evaluated at specific regular intervals.

(5) TYC program staff where the youth is assigned shall determine when criteria have been met.

(6) When criteria have been met, a youth shall be eligible for movement to an equal or less restrictive placement.

(e) Program Completion Criteria and Movement.

(1) High Restriction Program Completion Criteria.

(A) A youth in high restriction will be eligible for transition to medium restriction when the following criteria have been met:

(i) completion of minimum length of stay except three months; and

(ii) completion of required Individual Case Plan (ICP) objectives; and

(iii) completion of phase three resocialization goals (for youth classified on or after January 1, 1996), (not applicable to youth in contract placements); and

(iv) no major violation of rules of conduct within 30 days prior to the transition review.

(B) A youth who is transitioned under these criteria has not earned and shall not be on parole status. A youth transitioned may be returned to high restriction through a level II due process hearing at any time prior to attaining parole status. After attaining parole, the youth shall not be returned to high restriction except through a level I due process hearing.

(2) Residential Programs Completion Criteria.

(A) A youth in any residential program will be eligible for transition to minimum or home level restriction when the following criteria have been met:

(i) completion of the minimum length of stay; and

(ii) completion of required Individual Case Plan (ICP) objectives; and

(iii) completion of phase four resocialization goals (for youth classified on or after January 1, 1996), (not applicable to youth in contract placements); and

(iv) no major violations of rules of conduct within 30 days:

(I) prior to the case review to determine eligibility for parole release; and

(II) prior to the actual release.

(B) A youth who is transitioned under these criteria has earned and shall be on parole status and thus shall not be returned to a high restriction program except through a level I due process hearing to revoke parole status.

(f) Parole Status.

(1) Parole status shall be earned by the youth when he is deemed to have completed residential programs completion criteria, subsection (e)(2)(A) of this section. When a youth has earned parole status and transition to minimum or home restriction level placement is pending, he attains parole status in the current program prior to the transition, unless he is in a high restriction program, in which case, he attains parole status on leaving the facility.

(2) Parole status shall be granted to the youth, if not previously earned, at completion of six consecutive months in medium restriction program(s) even if criteria to earn parole has not been met.

(3) Sentenced Offenders shall not attain parole at any time prior to completion of serving their minimum period of confinement unless approved by the committing court. See subsection (h) of this section.

(g) Movement Without Program Completion.

(1) Administrative Transfer Movements. Administrative transfer movements may be made among programs of equal restrictions without a due process hearing. An administrative movement shall not be made in lieu of a movement for which a due process hearing is mandatory.

(2) Exceptions in Hardship Cases. Youth may be placed on parole status at home without meeting completion criteria in

hardship cases on the recommendation by parole officer and approval by the deputy executive director.

(3) Exceptions to Control Population. The deputy executive director may develop or approve youth movement options when necessary to control population and/or manage available funds concerning youth in residential placement.

(4) Exceptions for Mentally Ill and Mentally Retarded Youth. Certain youth who have completed their minimum lengths of stay or minimum periods of confinement (for sentenced offenders) and are unable to derive further benefit from the agency's rehabilitation programs because of mental illness or mental retardation, shall be transferred to a placement of less restriction. See (GAP) §87.77 of this title (relating to Early Transition of Mentally Ill and Mentally Retarded Youth).

(h) Sentenced Offenders. Due to the nature of determinate sentences, some rules governing the classification, placement, release, transition, parole status, and disciplinary movement of sentenced offenders must be applied differently, specifically:

(1) Classification. A youth classified at commitment as a sentenced offender shall retain that classification as long as the youth remains under the jurisdiction of TYC as a result of that commitment. See (GAP) §85.23 of this title (relating to Classification).

(2) Initial Placement. All sentenced offenders shall be assigned to high restriction perimeter-secure facilities unless the deputy executive director waives such placement for a particular youth.

(3) Youth sentenced to commitment in the Texas Youth Commission (TYC) for offenses committed on or after January 1, 1996.

(A) Requirements.

(i) The minimum period of confinement is ten (10) years for youth sentenced for capital murder; three (3) years for youth sentenced for an aggravated controlled substance felony or a felony of the first degree; two (2) years for a felony of the second degree; one (1) year for a felony of the third degree; or completion of the sentence, whichever occurs first.

(ii) Sentenced offenders shall serve the entire minimum period of confinement applicable to the youth's classifying offense in a high restriction facility unless moved earlier under legal requirements or options available.

(iii) In accordance with law, prior to a sentenced offender's completion of the minimum period of confinement applicable to the youth's classifying offense, TYC may request a hearing by the juvenile court to obtain approval for release home on TYC parole.

(I) TYC will not consider requesting such a hearing for a youth who is sentenced for capital murder unless he or she has completed at least three years in a high restriction placement.

(II) TYC may consider requesting a hearing for a youth who has participated and successfully completed a specialized treatment program (as evidenced by completion of all ICP objectives and all resocialization goals) and has not reached age 19.

(iv) Following a sentenced offender's completion of the minimum period of confinement, the youth shall be governed

rules for the classification the youth would have received if not a sentenced offender.

(v) TYC jurisdiction shall be terminated and a sentenced offender discharged when his/her sentence is complete. All movement and transfer options occur prior to completion of sentence.

(B) Transfer From TYC High Restriction To TDCJ, Institution. Transfer from a high restriction facility to the Texas Department of Criminal Justice, Institutional Division (TDCJ, ID) may occur as follows.

(i) A transfer shall be automatic for a youth at age 21 who:

(I) was sentenced for capital murder; and

(II) has not completed the minimum period of confinement applicable to the youth's classifying offense (10 years) or the sentence if less than 10 years.

(ii) A transfer shall occur if ordered by the juvenile court. TYC may request a juvenile court hearing for a youth whose parole has been revoked and the following criteria have been met.

(I) youth is at least age 16; and

(II) youth's parole was revoked for:

(-a-) felony, Class A misdemeanor, or a high risk offense; or

(-b-) any other violation which resulted in placement in an intermediate sanction program at which the youth has failed to progress; and

(III) youth has not completed his/her sentence; and

(IV) youth's conduct indicates that the welfare of the community require the transfer; and

(V) the superintendent or quality assurance administrator recommends the transfer; and

(VI) deputy executive director approves recommendation.

(iii) A transfer shall occur if ordered by the juvenile court. TYC may request a juvenile court hearing for any other youth if the following criteria have been met:

(I) youth is at least age 16; and

(II) youth has spent at least six months in a high restriction facility; and

(III) youth has not completed his/her sentence; and

(IV) has met at least one of the following behavior criteria:

(-a-) youth has committed a felony or Class A misdemeanor; or

(-b-) youth persistently has committed major rule violations (on three or more occasions); or

(-c-) youth has engaged in chronic disruption of program (five security admissions or extensions in one month or ten in three months); or

(-d-) youth has demonstrated an inability to progress in his/her resocialization program due to persistent non compliance with treatment objectives; and

(V) alternative interventions have been tried without success (for example: special treatment plans, disciplinary transfer, extended stay); and

(VI) youth's conduct indicates that the welfare of the community requires the transfer; and

(VII) the superintendent or quality assurance administrator recommends transfer; and

(VII) the deputy executive director approves recommendation.

(C) Transfer From TYC High Restriction To TDCJ, Pardons and Parole. Transfer from a high restriction facility to the Texas Department of Criminal Justice, Pardons and Paroles (TDCJ, PP), shall be automatic:

(i) at any time after age 19 that a youth has completed the minimum period of confinement applicable to the youth's classifying offense and TYC releases the youth.

(ii) at age 21 if youth was sentenced for any offense other than capital murder and has not completed the sentence.

(D) Transfer From TYC Home Parole To TDCJ, Pardons and Parole. Transfer from TYC under supervision (parole at home) to the Texas Department of Criminal Justice, Pardons and Paroles (TDCJ, PP), shall be automatic at age 21 if the youth has not completed his sentence.

(4) Youth sentenced to commitment in TYC for offenses committed before January 1, 1996.

(A) Movement and Parole. Sentenced offenders who meet program completion criteria for transition or parole shall not be released without proper authorization:

(i) Prior to a sentenced offender's 18th birthday, a youth may be transitioned to an appropriate placement if approved by the superintendent or quality assurance administrator. The placement may be to any location other than home or home substitute.

(ii) When a juvenile court orders that a sentenced offender be released under supervision, the youth shall be transitioned or paroled, as appropriate to the youth's progress at the time of the court's order.

(iii) When the juvenile court orders that a sentenced offender be recommitted to TYC without a determinate sentence, the youth's eligibility for release on parole or transition shall be governed by the release criteria and procedures for the classification the youth would have received if not a sentenced offender.

(B) Disciplinary Movement. A sentenced offender may be assigned to any appropriate placement, including a high restriction facility, following a disciplinary hearing. The appropriate placement will be selected according to the totality of the circumstances, including the youth's age, sentencing offense, length of time and progress in TYC custody, and the nature of the misconduct for which the youth is being disciplined.

(C) Movement Exceptions. Sentenced offenders may be considered for release under a hardship condition only if:

(i) the youth is less than 18 years of age and the release is approved by the committing court; or

(ii) the youth is 18 years of age or older and meets the exception criteria for the classification the youth would have received if not a sentenced offender.

(i) Notification. Parents or guardians will be notified of all movements.

Issued in Austin, Texas, on July 28, 1997.

TRD-9709779

Steve Robinson

Executive Director

Texas Youth Commission

Effective date: August 1, 1997

Expiration date: December 1, 1997

For further information, please call: (512) 424-6244

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PROPOSED RULES

Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the *Texas Register* at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

Symbology in proposed amendments. New language added to an existing section is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a section.

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 12. Coal Mining Regulations

The Railroad Commission of Texas proposes the repeal of §§12.173, 12.340, 12.341, 12.342, 12.344, 12.347-12.349, 12.350, 12.355, 12.390, 12.395, 12.396, 12.510, 12.511, 12.512, 12.514, 12.517, 12.519, 12.522, 12.524, 12.555, 12.560, and 12.561, all relating to regulation of coal mining and reclamation; proposes new rules §§12.25-12.33, 12.173, 12.340, 12.341, 12.344, 12.347-12.350, 12.355, 12.390, 12.395, 12.510, 12.511, 12.514, 12.517, 12.519, 12.522, 12.524, 12.555 and 12.560, all relating to regulation of coal mining and reclamation; and proposes amendments to 16 TAC §§12.2, 12.3, 12.10, 12.13-12.16, 12.72, 12.76, 12.83, 12.107, 12.116, 12.124-12.131, 12.135, 12.136, 12.137, 12.139, 12.142, 12.145, 12.146, 12.148, 12.150, 12.170, 12.171, 12.172, 12.174, 12.175, 12.176, 12.177, 12.181, 12.182, 12.183, 12.185, 12.188, 12.190, 12.196, 12.197, 12.202, 12.210, 12.215, 12.216, 12.220, 12.221, 12.225, 12.227, 12.301, 12.327, 12.328, 12.331, 12.352, 12.357, 12.358, 12.360, 12.362, 12.363, 12.364, 12.366, 12.370, 12.375, 12.376, 12.377, 12.378, 12.380, 12.385, 12.387, 12.388, 12.400, 12.401, 12.509, 12.526, 12.527, 12.528, 12.530, 12.531, 12.532, 12.533, 12.534, 12.535, 12.536, 12.537, 12.538, 12.539, 12.540, 12.541, 12.542, 12.543, 12.544, 12.545, 12.547, 12.552, 12.554, 12.569, 12.570, 12.651, 12.660, 12.661, 12.698, 12.702, 12.703, 12.704, and 12.706, all relating to regulation of coal mining and reclamation.

Sections 12.173, 12.340, 12.341, 12.344, 12.347, 12.348, 12.349, 12.350, 12.355, 12.390, 12.395, 12.510, 12.511, 12.512, 12.514, 12.517, 12.519, 12.522, 12.524, and 12.560, all relating to coal mining and reclamation, are simultaneously repealed and replaced by new sections of the same section number. The following new sections address deficiencies in the state program identified by the Office of Surface Mining Reclamation and Enforcement (OSM) and are substantially

identical to the corresponding federal regulation, shown in (parentheses):

Section 12.173, relating to Geology Description (30 CFR 784.22);

Section 12.340, relating to Hydrologic Balance: Water-Quality Standards and Effluent Limitations (30 CFR 816.42);

Section 12.341, relating to Hydrologic Balance: Diversions and Conveyance of Overland Flow and Shallow Ground Water Flow, and Ephemeral Streams (30 CFR 816.43 and 816.44);

Section 12.344, relating to Hydrologic Balance: Siltation Structures (30 CFR 816.46);

Section 12.347, relating to Hydrologic Balance: Permanent and Temporary Impoundments (30 CFR 816.49);

Section 12.348, relating to Hydrologic Balance: Ground-Water Protection (30 CFR 816.50);

Section 12.349, relating to Hydrologic Balance: Protection of Ground Water Recharge Capacity (30 CFR 816.51);

Section 12.350, relating to Hydrologic Balance: Surface and Ground-Water Monitoring (30 CFR 816.52);

Section 12.355, relating to Hydrologic Balance: Stream Buffer Zones (30 CFR 816.57);

Section 12.390, relating to Revegetation: General Requirements (30 CFR 816.111);

Section 12.395, relating to Revegetation: Standards for Success (30 CFR 816.116 and 816.117). New §12.395 adds the postmining land use of "undeveloped land" to the list of land uses where ground cover and production of living plants must be at least equal to that of a reference area or such other success standard approved by the commission;

Section 12.510, relating to Hydrologic Balance: Water-Quality Standards and Effluent Limitations (30 CFR 817.42);

Section 12.511, relating to Hydrologic Balance: Diversions and Conveyance of Overland Flow and Shallow Ground Water Flow, Ephemeral Streams (30 CFR 817.43 and 817.44);

Section 12.514, relating to Hydrologic Balance: Sedimentation Ponds (30 CFR 817.46);

Section 12.517, relating to Hydrologic Balance: Permanent and Temporary Impoundments (30 CFR 817.49);

Section 12.519, relating to Hydrologic Balance: Surface and Ground-Water Monitoring (30 CFR 784.41);

Section 12.522, relating to Hydrologic Balance: Discharge of Water into an Underground Mine (30 CFR 784.41);

Section 12.524, relating to Hydrologic Balance: Stream Buffer Zones (30 CFR 817.57);

Section 12.555, relating to Revegetation: General Requirements (30 CFR 817.111); and

Section 12.560, relating to Revegetation: Standards for Success (30 CFR 817.116 and 817.117).

The following sections are proposed to be repealed and the portions of those sections to be retained have been amended and moved as described below:

Section 12.342, relating to Hydrologic Balance: Stream Channel Diversions, is repealed; the provisions that are retained have been amended and moved to new §12.341, relating to Hydrologic Balance: Diversions;

Section 12.396, relating to Revegetation: Tree and Shrub Stocking for Forest Land, is repealed; the provisions that are retained have been amended and moved to new §12.395, relating to Revegetation: Standards for Success;

Section 12.512, relating to Hydrologic Balance: Stream Channel Diversions, is repealed; the provisions that are retained have been amended and moved to proposed new '12.511, relating to Hydrologic Balance: Diversions; and

Section 12.561, relating to Revegetation: Tree and Shrub Stocking for Forest Land, is repealed; the provisions that are retained have been amended and moved to new §12.560, relating to Revegetation: Standards for Success.

New §§12.25, 12.26, 12.27, 12.28, 12.29, 12.30, 12.31, 12.32, and 12.33, all relating to coal mining and reclamation, are proposed for adoption. The following new sections address deficiencies in the state program identified by OSM and are substantially identical to the corresponding federal regulation, shown in (parentheses):

Section 12.25, relating to Scope of Exemption for Coal Extraction Incidental to the Extraction of Other Minerals (30 CFR 702.1);

Section 12.26, relating to Application Requirements and Procedures for Exemption for Coal Extraction Incidental to the Extraction of Other Minerals (30 CFR 702.11);

Section 12.27, relating to Contents of Application for Exemption for Coal Extraction Incidental to the Extraction of Other Minerals (30 CFR 702.12);

Section 12.28, relating to Public Availability of Information under Exemption for Coal Extraction Incidental to the Extraction of Other Minerals (30 CFR 702.13);

Section 12.29, relating to Requirements for Exemption for Coal Extraction Incidental to the Extraction of Other Minerals (30 CFR 702.14);

Section 12.30, relating to Conditions of Exemption for Coal Extraction Incidental to the Extraction of Other Minerals (30 CFR 702.15);

Section 12.31, relating to Stockpiling of Minerals relating to Exemption for Coal Extraction Incidental to the Extraction of Other Minerals (30 CFR 702.16);

Section 12.32, relating to Revocation and Enforcement pertaining to Exemption for Coal Extraction Incidental to the Extraction of Other Minerals (30 CFR 702.17); and

Section 12.33, relating to Reporting Requirements for Exemption for Coal Extraction Incidental to the Extraction of Other Minerals (30 CFR 702.18).

The amendments to §§12.2, 12.3, 12.10, 12.13, 12.14, 12.15, 12.16, 12.72, 12.76, 12.83, 12.107, 12.116, 12.126, 12.127, 12.128, 12.129, 12.130, 12.142, 12.146, 12.148, 12.172, 12.174, 12.175, 12.176, 12.188, 12.190, 12.197, 12.202, 12.210, 12.215, 12.216, 12.220, 12.221, 12.225, 12.227, 12.301, 12.327, 12.328, 12.352, 12.357, 12.358, 12.360, 12.362, 12.375, 12.376, 12.377, 12.378, 12.380, 12.385, 12.509, 12.526, 12.527, 12.528, 12.530, 12.535, 12.538, 12.543, 12.544, 12.545, 12.547, 12.552, 12.698, 12.702, 12.703, 12.704, and 12.706, relating to regulation of coal mining and reclamation, address deficiencies in the state program identified by OSM in review of the Texas Permanent State Program and which OSM deemed necessary to ensure the state program remains no less stringent than the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and no less effective than the corresponding federal regulations. The following proposed amendments to existing regulations contain language that is substantially identical to the corresponding federal regulations (listed in parentheses), as determined by the Director of OSM (see, 62 *FedReg* 14311, March 26, 1997):

Section 12.2, relating to Authority, Responsibility, and Applicability (30 CFR 700.11(a)(4), (a)(5), and (d));

Section 12.3, relating to definitions, including definitions for "adjacent area", "affected area", "applicant", "application", "coal mining operation", "coal processing waste", "complete and accurate application", "ground cover", "other treatment facility", "property to be mined", "replacement of water supply", "sedimentation pond", "siltation structure" (30 CFR 701.5), definitions for "cumulative measurement period", "cumulative production", "cumulative revenue", "mining area", "other minerals" (30 CFR 702.5), and definition for "violation, failure, or refusal" (30 CFR 724.5);

Sections 12.10, 12.13, 12.14, 12.15, and 12.16, restrictions of financial interests of state employees (30 CFR 705.4, 705.5, 705.11, 705.13, 705.15, and 705.17);

Sections 12.72, 12.76, and 12.83, relating to procedures and requirements for designating lands unsuitable for surface coal mining operations (30 CFR 761.12 and 762.13);

Section 12.116, relating to Identification of Interests and Compliance Information for Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Procedures Systems (30 CFR 778.14(c));

Section 12.126, relating to Surface Mining Permit Minimum Requirements for Information on Environmental Resources relating to Description of Hydrology and Geology (30 CFR 780.21);

Section 12.127, relating to Surface Mining Permit Minimum Requirements for Information on Environmental Resources relating to Geology Description (30 CFR 780.22);

Section 12.128, relating to Surface Mining Permit Minimum Requirements for Information on Environmental Resources relating to Ground-Water Information (30 CFR 780.21);

Section 12.129, relating to Surface Mining Permit Minimum Requirements for Information on Environmental Resources relating to Surface-Water Information (30 CFR 780.21);

Section 12.130, relating to Surface Mining Permit Minimum Requirements for Information on Environmental Resources relating to Alternative Water Supply Information (30 CFR 780.21);

Section 12.142, relating to Surface Mining Permit Minimum Requirements for Reclamation and Operation Plan relating to Maps and Plans pertaining to Operation Plans (30 CFR 780.14);

Section 12.146, relating to Surface Mining Permit Minimum Requirements for Reclamation and Operation Plan relating to Protection of Hydrologic Balance pertaining to Reclamation Plans (30 CFR 780.21);

Section 12.148, relating to Surface Mining Permit Minimum Requirements for Reclamation and Operation Plan relating to Ponds, Impoundments, Banks, Dams, and Embankments pertaining to Reclamation Plans (30 CFR 780.14);

Section 12.172, relating to Underground Mining Permit Minimum Requirements for Information on Environmental Resources relating to Description of Hydrology and Geology (30 CFR 784.14);

Section 12.174, relating to Underground Mining Permit Minimum Requirements for Information on Environmental Resources relating to Ground-Water Information (30 CFR 784.14);

Section 12.175, relating to Underground Mining Permit Minimum Requirements for Information on Environmental Resources relating to Surface-Water Information (30 CFR 784.14);

Section 12.176, relating to Underground Mining Permit Minimum Requirements for Information on Environmental Resources relating to Alternative Water Supply Information;

Section 12.188, relating to Underground Mining Permit Minimum Requirements for Reclamation and Operation Plan relating to Protection of Hydrologic Balance pertaining to Reclamation Plans (30 CFR 784.14);

Section 12.190, relating to Underground Mining Permit Minimum Requirements for Reclamation and Operation Plan relating to Ponds, Impoundments, Banks, Dams, and Embankments pertaining to Reclamation Plans (30 CFR 784.16);

Section 12.197, relating to Underground Mining Permit Minimum Requirements for Reclamation and Operation Plan relating to Maps and Plans pertaining to Operation Plans (30 CFR 784.23);

Section 12.202, relating to Surface Coal Mining and Reclamation Operations on Areas or Adjacent to Areas Including Alluvial Valley Floors in the Arid or Semi-Arid Areas west of the 100th Meridian (30 CFR 785.19);

Section 12.210, relating to Public Availability of Information under Exemption in Permit Applications on File with the Commission (30 CFR 773.13);

Section 12.215, relating to Review of Permit Applications for Permits for Special Categories of Mining (30 CFR 773.15(b)(1));

Section 12.216, relating to Criteria for Approval or Denial of Permits for Special Categories of Mining (30 CFR 773.15);

Section 12.220, relating to General and Right of Entry Conditions of Permits for Special Categories of Mining (30 CFR 773.17);

Section 12.225, relating to Commission Review of Outstanding Permits (30 CFR 773.21);

Section 12.301, relating to Requirements for Filing a Bond for Surface Coal Mining and Reclamation Operations (30 CFR 800.11);

Section 12.327, relating to Performance Standards for Coal Exploration (30 CFR 815.15);

Section 12.328, relating to Requirements for a Permit for Coal Exploration (30 CFR 772.14);

Section 12.352, relating to Permanent Program Performance Standards for Surface Mining Activities related to Water Rights and Replacement of Water (30 CFR 816.41(h));

Section 12.357, relating to Permanent Program Performance Standards for Surface Mining Activities related to General Requirements for the Use of Explosives (30 CFR 816.61);

Section 12.358, relating to Permanent Program Performance Standards for Surface Mining Activities related to Pre-Blasting Survey for the Use of Explosives (30 CFR 816.62);

Section 12.360, relating to Permanent Program Performance Standards for Surface Mining Activities related to Control of Adverse Affects for the Use of Explosives (30 CFR 816.61 and 816.67);

Section 12.362, relating to Permanent Program Performance Standards for Surface Mining Activities related to Records of Blasting Operations pertaining to the Use of Explosives (30 CFR 816.68);

Section 12.375, relating to Permanent Program Performance Standards for Surface Mining Activities related to Disposal of Noncoal Wastes; portions of §12.375 were inadvertently omitted from the rules adopted on March 17, 1997 (22 *Tex.Reg.* 3093, March 28, 1997).

Section 12.376, relating to Permanent Program Performance Standards for Surface Mining Activities related to General Requirements for Dams and Embankments pertaining to Coal Mine Waste (30 CFR 816.84);

Section 12.377, relating to Permanent Program Performance Standards for Surface Mining Activities related to Site Preparation for Dams and Embankments pertaining to Coal Mine Waste (30 CFR 816.84);

Section 12.378, relating to Permanent Program Performance Standards for Surface Mining Activities related to Design and Construction Standards for Dams and Embankments pertaining to Coal Mine Waste (30 CFR 816.84);

Section 12.380, relating to Permanent Program Performance Standards for Surface Mining Activities related to Protection of Fish, Wildlife, and Related Environmental Values (30 CFR 816.97(h));

Section 12.385, relating to Permanent Program Performance Standards for Surface Mining Activities related to General Requirements pertaining to Backfilling and Grading (30 CFR 816.83(c)(2));

Section 12.509, relating to Permanent Program Performance Standards for Underground Mining Activities related to General Requirements pertaining to Hydrologic Balance (30 CFR 817.41);

Section 12.526, relating to Permanent Program Performance Standards for Underground Mining Activities related to General Requirements for the Use of Explosives (30 CFR 817.61);

Section 12.527, relating to Permanent Program Performance Standards for Underground Mining Activities related to Pre-Blasting Survey for the Use of Explosives (30 CFR 817.62);

Section 12.528, relating to Permanent Program Performance Standards for Underground Mining Activities related to Control of Adverse Effects pertaining to the Use of Explosives (30 CFR 817.61, 817.66, and 817.67);

Section 12.530, relating to Permanent Program Performance Standards for Underground Mining Activities related to Records of Blasting Operations pertaining to the Use of Explosives (30 CFR 817.68);

Section 12.535, relating to Permanent Program Performance Standards for Underground Mining Activities related to General Requirements pertaining to Coal Mine Waste Banks (30 CFR 817.81(c)(1));

Section 12.538, relating to Permanent Program Performance Standards for Underground Mining Activities related to Construction Requirements pertaining to Coal Mine Waste Banks;

Section 12.543, relating to Permanent Program Performance Standards for Underground Mining Activities related to General Requirements for Dams and Embankments pertaining to Coal Mine Waste (30 CFR 817.84);

Section 12.544, relating to Permanent Program Performance Standards for Underground Mining Activities related to Site Preparation for Dams and Embankments pertaining to Coal Mine Waste (30 CFR 817.84);

Section 12.545, relating to Permanent Program Performance Standards for Underground Mining Activities related to Design and Construction Standards for Dams and Embankments pertaining to Coal Mine Waste (30 CFR 817.84);

Section 12.547, relating to Permanent Program Performance Standards for Underground Mining Activities related to Protection of Fish, Wildlife, and Related Environmental Values (30 CFR 817.97(h));

Section 12.552, relating to Permanent Program Performance Standards for Underground Mining Activities related to General Grading Requirements pertaining to Backfilling and Grading (30 CFR 817.83(c)(2));

Section 12.698, relating to Procedure for Assessment of Civil Individual Penalties (30 CFR 846.17(c));

Section 12.702, relating to General Requirements for the Training, Examination, and Certification of Blasters (30 CFR 850.13, 850.14, and 850.15);

Section 12.703, relating to Training Requirements for Blasters (30 CFR 850.13(b)(1)(iii));

Section 12.704, relating to Training Courses for Blasters (30 CFR 850.13); and

Section 12.706, relating to Examination of Blasters (30 CFR 850.14).

Proposed amendment to §12.3, relating to Definitions, adds the term "administratively complete application" to distinguish between an application that contains all the information that is necessary to initiate processing and public review and an application that contains all the information that is necessary to make a decision on permit issuance which is denominated a "complete and accurate application" in these regulations.

Proposed amendments to §§12.107, 12.124, 12.125, 12.131, 12.135, 12.136, 12.137, 12.139, 12.145, 12.150, 12.170, 12.171, 12.177, 12.181, 12.182, 12.183, 12.185, 12.196, 12.221, 12.227, 12.331, 12.363, 12.364, 12.366, 12.370, 12.375, 12.387, 12.388, 12.400, 12.401, 12.531, 12.532, 12.533, 12.534, 12.536, 12.537, 12.539, 12.540, 12.541, 12.542, 12.554, 12.569, 12.570, 12.651, 12.660, and 12.661, make nonsubstantive changes to internal references and terminology.

Mark Barnett, Staff Attorney, Environmental Section, Office of General Counsel, has determined that for each of the first five years the repeals, amendments, and new sections as proposed will be in effect, there will be no fiscal implications to state or local governments or small businesses as a result of enforcing or administering them.

Mr. Barnett has further determined that for each of the first five years the repeals, amendments, and new sections as proposed will be in effect, the public benefit will be continued compliance with federal requirements for coal mining and reclamation programs, thereby allowing continued authorization and federal funding of the commission's federally approved Surface Coal Mine and Reclamation Program. There is no anticipated economic effect to small businesses or to individuals.

Comments on the proposal may be submitted to Mark H. Barnett, Staff Attorney, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*. For further information please call Mark H. Barnett at (512) 463-6801.

Subchapter A. General

General

16 TAC §12.2, §12.3

The amendments are proposed under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the proposed new sections and amendments.

§12.2. *Authority, Responsibility and Applicability.*

(a) (No change.)

(b) This chapter applies to all coal exploration and surface coal mining and reclamation operations, except:

(1)-(3) (No change.)

(4) the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 2/3% of the total tonnage of coal and other minerals removed annually for commercial use or sale [or coal explorations subject to this Act.] **in accordance with §§12.25 through 12.34 of this title (relating to Exemption for Coal Extraction Incidental to the Extraction of Other Minerals); and**

(5) **coal exploration on lands subject to the requirements of 43 CFR Parts 3480-3487.**

(c)-(e) (No change.)

(f) **The Commission may terminate its jurisdiction under the approved state program over the reclaimed site of a completed surface coal mining and reclamation operation, or increment thereof, when the Commission determines in writing that under the permanent program, all requirements imposed under the approved state program have been successfully completed, or, where a performance bond was required, the Commission has made a final decision in accordance with Subchapter J of this chapter (relating to Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations) to fully release the performance bond. Following a termination under this paragraph, the Commission shall reassert jurisdiction under the permanent regulatory program over a site if it is demonstrated that the bond release or written determination was based upon fraud, collusion, or misrepresentation of material fact.**

§12.3. *Definitions.*

The following words and terms, when used in this chapter (relating to Coal Mining Regulations), shall have the following meanings unless the context clearly indicates otherwise:

Adjacent area– Land located outside the affected area or [,] permit area, [or mine plan area,] depending on the context in which adjacent area is used, where air, surface or ground water, fish, wildlife, vegetation or other resources protected by the Act may be adversely impacted by surface coal mining and reclamation operations.

Administratively complete application– An application for permit approval or approval for coal exploration where required, which the Commission determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate processing and public review.

Affected area– Any land or water surface **which is used to facilitate, or** which is physically altered by surface coal mining and reclamation operations. Affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from surface coal mining and reclamation operations; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas ; [,] any areas which contain sited structures, facilities, or other property material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings.

Applicant– Any person seeking a permit , **permit revision, renewal, and transfer, assignment, or sale of permit rights** from the Commission to conduct surface or underground coal mining and reclamation operations pursuant to the Act. With respect to Subchapter G of this chapter (relating to Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Procedures Systems), this term includes a person who seeks to obtain exploration approval or a permit under that subchapter and the regulatory program. With respect to Subchapter M of this chapter (Relating to Training), this term includes a person who submits an application to the Commission to request blaster training, examination or certification.

Application– The documents and other information filed with the Commission under this chapter (relating to Coal Mining Regulations) for the issuance of **permits; revisions; renewals; and transfers, assignment, or sale of permit rights for surface coal mining and reclamation operations or, where required, for coal exploration** [exploration approval or a permit]. With respect to Subchapter M of this chapter (relating to Training), this term includes a request submitted to the Commission on a prescribed form, and including any required fee and any applicable supporting evidence or other attachments.

Coal mining operation– The business of developing, producing, preparing or [and] loading bituminous coal, subbituminous coal, anthracite, or lignite, or of reclaiming the areas upon which such activities occur.

Coal processing waste– Earth materials which are [combustible, physically unstable, or acid-forming or toxic-forming, which are wasted or otherwise] separated **and wasted from the product coal during** [, and slurried or otherwise transported from coal preparation plants, after physical or chemical processing,] cleaning, [or] concentrating , **or other processing or preparation** of coal.

Complete and accurate application– An application for permit approval or approval for coal exploration where required, which the Commission determines to contain all information required under the Act, this chapter (relating to Coal Mining Regulations), and the regulatory program that is necessary to make a decision on permit issuance.

[Complete application– An application for exploration approval or permit, which contains all information required under the Act and this chapter (relating to Coal Mining Regulations).]

Cumulative measurement period– As used in §§12.25 through 12.33 of this title (relating to Exemption for Coal Extraction

Incidental to the Extraction of Other Minerals), the period of time over which both cumulative production and cumulative revenue are measured.

(A) For purposes of determining the beginning of the cumulative measurement period, subject to Commission approval, the operator must select and consistently use one of the following:

(i) for mining areas where coal or other minerals were extracted prior to August 3, 1977, the date extraction of coal or other minerals commenced at that mining area or August 3, 1977; or

(ii) for mining areas where extraction of coal or other minerals commenced on or after August 3, 1977, the date extraction of coal or other minerals commenced at that mining area, whichever is earlier.

(B) For annual reporting purposes pursuant to §12.33 of this title (relating to Reporting Requirements), the end of the period for which cumulative production and revenue is calculated is either:

(i) for mining areas where coal or other minerals were extracted prior to the effective date of §§12.25-12.33 of this title (relating to Exemption from Coal Extraction Incidental to the Extraction of Other Minerals), the first anniversary of that date, and each anniversary of that date thereafter; or

(ii) for mining areas where extraction of coal or other minerals commenced on or after the effective date of §§12.25-12.33 of this title, the last day of the calendar quarter during which coal extraction commenced, and each anniversary of that date thereafter.

Cumulative production – As used in §§12.25-12.33 of this title, the total tonnage of coal or other minerals extracted from a mining area during the cumulative measurement period. The inclusion of stockpiled coal and other mineral tonnages in this total is governed by §12.31 of this title (relating to Stockpiling of Minerals).

Cumulative revenue – As used in §§12.25-12.33 of this title, the total revenue derived from the sale of coal or other minerals and the fair market value of coal or other minerals transferred or used, but not sold, during the cumulative measurement period.

Director– The Director or Acting Director, Office of Surface Mining Reclamation and Enforcement, [within the] U.S. Department of the Interior, or the Director's representative.

Employee– Shall include:

(A) any person employed by the Commission who performs any function or duty under the Act, including [any of] the Commissioners [of the Railroad Commission of Texas]; and

(B) (No change.)

General area– With respect to hydrology, the topographic and ground-water basin surrounding a **permit** [mine plan] area which is of sufficient size, including areal extent and depth, to include one or more watersheds containing perennial streams and ground-water zones and to allow assessment of the probable cumulative impacts on the quality and quantity of surface- and ground-water systems in the basins.

Ground cover – The area of ground covered by the combined aerial parts of vegetation and the litter that is produced naturally onsite, expressed as a percentage of the total area of measurement.

[Mine plan area– The area of land and water within the boundaries of all permit areas during the entire life of the surface coal mining and reclamation operations. At a minimum, it includes all areas which are or will be affected during the entire life of those operations. Other terms defined in this section which relate closely to mine plan area are:

[(A) permit area, which will always be within or the same as the mine plan area;

[(B) affected area, which will always be within or the same as the permit area; and

[(C) adjacent area, which may surround or extend beyond the affected area, permit area, or mine plan area.]

Mining area – As used in §§12.25-12.33 of this title, an individual excavation site or pit from which coal, other minerals, and overburden are removed.

Other minerals – As used in §§12.25-12.33 of this title, any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste, and fill material.

Other treatment facility– Any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point source discharge and are utilized:

(A) to prevent additional contributions of dissolved or suspended solids to streamflow or runoff outside the permit area; or

(B) to comply with all applicable state and federal water-quality laws and regulations.

Property to be mined– Both the surface estates and mineral estates within the permit area and the area covered by underground workings. [Both the surface and mineral estates on and underneath lands which are within the permit area.]

Replacement of water supply– With respect to protected water supplies contaminated, diminished, or interrupted by coal mining operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water-delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.

(A) Upon agreement by the permittee and the water-supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water-supply owner.

(B) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is

available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water-supply owner.

Sedimentation pond— A primary sediment control structure designed, constructed and maintained in accordance with §12.344 or §12.514 of this title (relating to Hydrologic Balance: **Siltation Structures** [Sedimentation Ponds]) and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow sediment to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts and other measures that reduce overland flow velocity, reduce runoff volume or trap sediment to the extent that such secondary sedimentation structures drain to a sedimentation pond.

Siltation structure – A sedimentation pond, a series of sedimentation ponds, or other treatment facility.

Violation, failure, or refusal— With respect to §§12.696-12.699 of this title (relating to Individual Civil Penalties), a violation of or a failure or refusal to comply with any order of the Commission including, but not limited to, **a condition of a permit**, notice of violation, failure-to-abate cessation order, imminent harm cessation order, order to show cause why a permit should not be suspended or revoked, and order in connection with a civil action for relief , **except an order incorporated in a decision issued under §134.175 of the Act.**

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on July 25, 1997.

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Mary Ross McDonald

Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas

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For further information, please call: (512) 463-7008



Restriction of Financial Interests of State Employees

16 TAC §§12.10, 12.13, 12.14, 12.15, 12.16

The amendments are proposed under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the proposed new sections and amendments:

§12.10. Responsibility.

(a) The Commissioners or the Director of the Surface Mining and Reclamation Division, acting as their authorized representative, shall:

(1)-(2) (No change.)

(3) resolve prohibited financial interest situations by ordering or initiating remedial action, [by initiating appropriate legal action,] or by reporting the violations to the Director who is responsible for initiating action to impose the penalties of the Federal Act;

(4)-(8) (No change.)

(b) (No change.)

(c) **Members of advisory boards and commissions established in accordance with state laws or regulations to represent multiple interests, who perform a function or duty under the Act, shall recuse themselves from proceedings which may affect their direct or indirect financial interests.**

§12.13. Who Shall File.

(a) Any employee who performs any function or duty under the Act is required to file a statement of employment and financial interests. **Members of advisory boards and commissions established in accordance with state laws or regulations to represent multiple interests, who perform a function or duty under the Act, must file a statement of employment and financial interests.** An employee who occupies a position which has been determined by the Commission not to involve performance of any function or duty under the Act or who is no longer employed by the Commission at the time a filing is due, is not required to file a statement.

(b)-(c) (No change.)

§12.14. When To File.

(a) **Employees and members of advisory boards and commissions representing multiple interests** performing functions or duties under the Act shall file [annually] on February 1st of each year.

(b) **New employees and new members of advisory boards and commissions representing multiple interests** hired, appointed, or transferred to perform functions or duties under the Act will be required to file at the time of entrance to duty. **No annual statement shall be required if the initial statement is filed with 60 days prior to February 1st.**

[(c) New employees are not required to file an annual statement on the subsequent annual filing date if this date occurs within two months after their initial statement was filed.]

§12.15. Where To File.

The Commissioners shall file their statements with the Director. All other employees **and members of advisory boards and commissions representing multiple interests, as provided in §12.13 of this title (relating to Who Shall File), shall file their statements** [statement] with the Commission.

§12.16. What To Report.

(a) Each employee **or member of an advisory board or commission representing multiple interests, as provided in §12.13 of this title (relating to Who Shall File), shall report all information** required on the statement of employment and financial interests of the **filer** [employee], his or her spouse, minor children, or other relatives who are full-time residents of the **filer's** [employee's] home. The report shall be on OSM Form **23** [705-1] as provided by the Office.

(b)-(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Exemption for Coal Extraction Incidental to the Extraction of Other Minerals

16 TAC §§12.25-12.33

The new sections are proposed under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the proposed new sections and amendments:

§12.25. *Scope.*

This section and §§12.26-12.33 of this title (relating to Exemption for Coal Extraction Incidental to the Extraction of Other Minerals) implements the exemption contained in §134.004(19)(A) of the Act concerning the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 2/3% of the total tonnage of coal and other minerals removed for purposes of commercial use or sale.

§12.26. *Application Requirements and Procedures.*

(a) Requirement to file an application. Any person who plans to commence or continue coal extraction after the effective date of §12.25, this section, and §§12.27-12.33 of this title (relating to Exemption From Coal Extraction Incidental to the Extraction of Other Minerals), in reliance on the incidental mining exemption shall file a complete application for exemption with the Commission for each mining area. A person may not commence coal extraction based upon the exemption until the Commission approves such application, except as provided in subsection (e)(3) of this section.

(b) Existing operations. Any person who has commenced coal extraction at a mining area in reliance upon the incidental mining exemption prior to the effective date of §12.25, this section, and §§12.27-12.33 of this title, may continue mining operations for 60 days after the effective date of §12.25, this section, and §§12.27-12.33 of this title. Coal extraction may not continue after such 60 day period unless that person files an administratively complete application for exemption with the Commission. An application will be determined to be administratively complete when it contains the information responsive to the requirements of §12.27 of this title (relating to Contents of Application for Exemption). If an administratively complete application is filed within 60 days, the person may continue extracting coal in reliance on the exemption beyond the 60-day period until the Commission makes an administrative decision on such application.

(c) Additional information. The Commission shall notify the applicant if the application for exemption is incomplete and may at any time require submittal of additional information.

(d) Public comment period. Following publication of the newspaper notice required by §12.27(i) of this title, the Commission shall provide a period of no less than 30 days, during which time any person having an interest which is or may be adversely affected by a decision on the application may submit written comments or objections.

(e) Exemption determination.

(1) No later than 90 days after filing of an administratively complete application, the Commission shall make a written determination whether, and under what conditions, the persons claiming the exemption are exempt under §12.25, this section, and §§12.27-12.33 of this title, and shall notify the applicant and persons submitting comments on the application of the determination and the basis for the determination.

(2) The determination of exemption shall be based upon information contained in the application and any other information available to the Commission at that time.

(3) If the Commission fails to provide an applicant with the determination as specified in paragraph (1) of this subsection, an applicant who has not begun may commence coal extraction pending a determination on the application unless the Commission issues an interim finding, together with reasons therefor, that the applicant may not begin coal extraction.

(f) Appeal and review. Any adversely affected person may request appeal or review of a determination under subsection (e) of this section in accordance with procedures established under §12.222 of this title (relating to Administrative Review).

§12.27. *Contents of Application For Exemption.*

An application for exemption shall include, at a minimum:

- (1) the name and address of the applicant;
- (2) a list of the minerals sought to be extracted;
- (3) estimates of annual production of coal and the other minerals within each mining area over the anticipated life of the mining operation;
- (4) estimated annual revenues to be derived from bona fide sales of coal and other minerals to be extracted within the mining area;
- (5) where coal or the other minerals are to be used rather than sold, estimated annual fair market values at the time of projected use of the coal and other minerals to be extracted from the mining area;
- (6) the basis for all annual production, revenue, and fair market value estimates;
- (7) a description, including county, township if any, and boundaries of the land, of sufficient certainty that the mining areas may be located and distinguished from other mining areas;
- (8) an estimate to the nearest acre of the number of acres that will compose the mining area over the anticipated life of the mining operation.
- (9) evidence of publication, in a newspaper of general circulation in the county of the mining area, of a public notice that an application for exemption has been filed with the Commission. (The public notice must identify the persons claiming the exemption and must contain a description of the proposed operation and its locality that is sufficient for interested persons to identify the operation.);
- (10) representative stratigraphic cross-section(s) based on test borings or other information identifying and showing the relative position, approximate thickness and density of the coal and each other mineral to be extracted for commercial use or sale and the relative position and thickness of any material, not classified as other minerals, that will also be extracted during the conduct of mining activities;

(11) a map of appropriate scale which clearly identifies the mining area;

(12) a general description of mining and mineral processing activities for the mining area;

(13) a summary of sales commitments and agreements for future delivery, if any, which the applicant has received for other minerals to be extracted from the mining area, or a description of potential markets for such minerals;

(14) if the other minerals are to be commercially used by the applicant, a description specifying the use;

(15) for operations having extracted coal or other minerals prior to filing an application for exemption, in addition to the information required above, the following information must also be submitted:

(A) any relevant documents the operator has received from the Commission documenting its exemption from the requirements of the Act;

(B) the cumulative production of the coal and other minerals from the mining area; and

(C) estimated tonnages of stockpiled coal and other minerals; and

(16) any other information pertinent to the qualification of the operation as exempt.

§12.28. Public Availability of Information.

(a) Except as provided in subsection (b) of this section, all information submitted to the Commission under §§12.25-12.27, this section, and §12.29-12.33 of this title (relating to Exemption for Coal Extraction Incidental to the Extraction of Other Minerals) shall be made immediately available for public inspection and copying at the Division's central and local offices closest to the mining operations claiming exemption until at least three years after expiration of the period during which the subject mining area is active.

(b) The Commission may keep information submitted to the Commission under this part confidential if the person submitting it requests in writing, at the time of submission, that it be kept confidential and the information concerns trade secrets or is privileged commercial or financial information of the persons intending to conduct operations under §§12.25-12.27, this section, and §12.29-12.33 of this title.

(c) Information requested to be held as confidential under subsection (b) of this section shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information.

§12.29. Requirements For Exemption.

(a) Activities are exempt from the requirements of the Act if all of the following are satisfied:

(1) the cumulative production of coal extracted from the mining area determined annually as described in this paragraph does not exceed 16 2/3% of the total cumulative production of coal and other minerals removed during such period for purposes of bona fide sale or reasonable commercial use.

(2) coal is produced from a geological stratum lying above or immediately below the deepest stratum from which other minerals

are extracted for purposes of bona fide sale or reasonable commercial use.

(3) the cumulative revenue derived from the coal extracted from the mining area determined annually shall not exceed 50% of the total cumulative revenue derived from the coal and other minerals removed for purposes of bona fide sale or reasonable commercial use. If the coal extracted or the minerals removed are used by the operator or transferred to a related entity for use instead of being sold in a bona fide sale, then the fair market value of the coal or other minerals shall be calculated at the time of use or transfer and shall be considered rather than revenue.

(b) Persons seeking or that have obtained an exemption from the requirements of the Act shall comply with the following:

(1) each other mineral upon which an exemption under §§12.25-12.28, this section, and §§12.30-12.33 (relating to Exemption for Coal Extraction Incidental to the Extraction of Other Minerals) is based must be a commercially valuable mineral for which a market exists or which is mined in bona fide anticipation that a market will exist for the mineral in the reasonably foreseeable future, not to exceed twelve months from the end of the current period for which cumulative production is calculated. A legally binding agreement for the future sale of other minerals is sufficient to demonstrate the above standard; and

(2) if either coal or other minerals are transferred or sold by the operator to a related entity for its use or sale, the transaction must be made for legitimate business purposes.

§12.30. Conditions of Exemption and Right of Inspection and Entry.

A person conducting activities covered by §§12.25-12.29, this section, and §12.31-12.33 (relating to Exemption for Coal Extraction Incidental to the Extraction of Other Minerals) shall:

(1) maintain on-site or at other locations available to authorized representatives of the Commission, as well as authorized representatives of the Secretary, the information necessary to verify the exemption including, but not limited to, commercial use and sales information, extraction tonnages, and a copy of the exemption application and exemption approved by the Commission;

(2) notify the Commission upon the completion of the mining operation or permanent cessation of all coal extraction activities;

(3) conduct operations in accordance with the approved application or when authorized to extract coal under §12.26(b) or §12.26(e)(3) of this title (relating to Application Requirements and Procedures) prior to submittal or approval of an exemption application, in accordance with the standards of §§12.25-12.29, this section, and §§12.31-12.33 of this title;

(4) authorized representatives of the Commission, as well as authorized representatives of the Secretary, shall have the right to conduct inspections of operations claiming exemption under §§12.25-12.29, this section, and §§12.31-12.33 of this title (relating to Exemption for Coal Extraction Incidental to the Extraction of Other Minerals);

(5) each authorized representative of the Commission, as well as authorized representatives of the Secretary, conducting an inspection under §§12.25-12.29, this section, and §§12.31-12.33 of this title:

(A) shall have a right of entry to, upon, and through any mining and reclamation operations without advance notice or a search warrant, upon presentation of appropriate credentials;

(B) may, at reasonable times and without delay, have access to and copy any records relevant to the exemption; and

(C) shall have a right to gather physical and photographic evidence to document conditions, practices, or violations at a site; and

(6) no search warrant shall be required with respect to any activity under paragraphs (4) and (5) of this section, except that a search warrant may be required for entry into a building.

§12.31. Stockpiling of Minerals.

(a) Coal. Coal extracted and stockpiled may be excluded from the calculation of cumulative production until the time of its sale, transfer to a related entity or use:

(1) up to an amount equaling a 12-month supply of the coal required for future sale, transfer or use as calculated based upon the average annual sales, transfer and use from the mining area over the two preceding years; or

(2) for a mining area where coal has been extracted for a period of less than two years, up to an amount that would represent a 12-month supply of the coal required for future sales, transfer or use as calculated based on the average amount of coal sold, transferred, or used each month.

(b) Other minerals.

(1) The Commission shall disallow all or part of an operator's tonnages of stockpiled other minerals for purposes of meeting the requirements of §§12.25-12.30, this section, and §12.32 and §12.33 of this title (relating to Exemption for Coal Extraction Incidental to the Extraction of Other Minerals) if the operator fails to maintain adequate and verifiable records of the mining area of origin, the disposition of stockpiles or if the disposition of the stockpiles indicates the lack of commercial use or market for the minerals.

(2) The Commission may only allow an operator to utilize tonnages of stockpiled other minerals for purposes of meeting the requirements of §§12.25-12.30, this section, and §12.32 and §12.33 if:

(A) the stockpiling is necessary to meet market conditions or is consistent with generally accepted industry practices; and

(B) except as provided in paragraph (3) of this subsection, the stockpiled other minerals do not exceed a 12-month supply of the mineral required for future sales as approved by the Commission on the basis of the exemption application.

(3) The Commission may allow an operator to utilize tonnages of stockpiled other minerals beyond the 12-month limit established in paragraph (2) of this subsection if the operator can demonstrate to the Commission's satisfaction that the additional tonnage is required to meet future business obligations of the operator, such as may be demonstrated by a legally binding agreement for future delivery of the minerals.

(4) The Commission may periodically revise the other mineral stockpile tonnage limits in accordance with the criteria

established in paragraphs (2) and (3) of this subsection based on additional information available to the Commission.

§12.32. Revocation and Enforcement.

(a) Commission responsibility. The Commission shall conduct an annual compliance review of the mining area, utilizing the annual report submitted pursuant to §12.33 of this title (relating to Reporting Requirements), an on-site inspection, and any other information available to the Commission.

(b) Notification by Commission. If the Commission has reason to believe that a specific mining area was not exempt under the provisions of §§12.25-12.31, this section, and §12.33 of this title (relating to Exemption for Coal Extraction Incidental to the Extraction of Other Minerals) at the end of the previous reporting period, is not exempt, or will be unable to satisfy the exemption criteria at the end of the current reporting period, the Commission shall notify the operator that the exemption may be revoked and the reason(s) therefor. The exemption will be revoked unless the operator demonstrates to the Commission within 30 days that the mining area in question should continue to be exempt.

(c) Exemption Revoked.

(1) If the Commission finds that an operator has not demonstrated that activities conducted in the mining area qualify for the exemption, the Commission shall revoke the exemption and immediately notify the operator and intervenors. If a decision is made not to revoke an exemption, the Commission shall immediately notify the operator and intervenors.

(2) Any adversely affected person may request appeal or review of a decision whether to revoke an exemption in accordance with procedures established under §12.222 of this title (relating to Administrative Review).

(d) Direct enforcement.

(1) An operator mining in accordance with the terms of an approved exemption shall not be cited for violations of the Act and this chapter (relating to Coal Mining Regulations) which occurred prior to the revocation of the exemption.

(2) An operator who does not conduct activities in accordance with the terms of an approved exemption and knows or should know such activities are not in accordance with the approved exemption shall be subject to direct enforcement action for violations of the Act and this chapter (relating to Coal Mining Regulations) which occur during the period of such activities.

(3) Upon revocation of an exemption or denial of an exemption application, an operator shall stop conducting surface coal mining operations until a permit is obtained and shall comply with the applicable reclamation standards of the Act and this chapter (relating to Coal Mining Regulations) with regard to conditions, areas, and activities existing at the time of revocation or denial.

§12.33. Reporting Requirements.

(a) Exemption Approval.

(1) Following approval by the Commission of an exemption for a mining area, the person receiving the exemption shall, for each mining area, file a written report annually with the Commission containing the information specified in subsection (b) of this section.

(2) The report shall be filed no later than 30 days after the end of the 12-month period as determined in accordance with the

definition of "cumulative measurement period" in §12.3 of this title (relating to Definitions).

(3) The information in the report shall cover:

(A) annual production of coal and other minerals and annual revenue derived from coal and other minerals during the preceding 12-month period; and

(B) the cumulative production of coal and other minerals and the cumulative revenue derived from coal and other minerals.

(b) Reporting. For each period and mining area covered by the report, the report shall specify:

(1) the number of tons of extracted coal sold in bona fide sales and total revenue derived from such sales;

(2) the number of tons of coal extracted and used or transferred by the operator or related entity and the estimated total fair market value of such coal;

(3) the number of tons of coal stockpiled;

(4) the number of tons of other commercially valuable minerals extracted and sold in bona fide sales and total revenue derived from such sales;

(5) the number of tons of other commercially valuable minerals extracted and used or transferred by the operator or related entity and the estimated total fair market value of such minerals; and

(6) the number of tons of other commercially valuable minerals removed and stockpiled by the operator.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Mary Ross McDonald

Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas

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For further information, please call: (512) 463-7008

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Subchapter F. Lands Unsuitable for Mining

Areas Designated by Act of Congress

16 TAC §12.72

The amendment is proposed under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the proposed new sections and amendments:

§12.72. *Procedures.*

(a)-(b) (No change.)

(c) If the Commission is unable to determine whether the proposed operation is located within the boundaries of any of the lands in §12.71(1) of this title (relating to Areas Where Mining is

Prohibited or Limited) or closer than the limits provided in §12.71(6) and (7) of this title, the Commission shall transmit a copy of the relevant portions of the permit application to the appropriate federal, state or local government agency for a determination or clarification of the relevant boundaries or distances, with a notice to the appropriate agency that it has 30 days from receipt of the notification in which to respond. **The National Park Service or the U.S. Fish and Wildlife Service shall be notified of any request for a determination of valid existing rights pertaining to areas within the boundaries of areas under their jurisdiction and shall have 30 days from receipt of the notification in which to respond. The Commission, upon request by the appropriate agency, shall grant an extension to the 30-day period of an additional 30 days. If no response is received within the 30-day period or within the extended period granted, the Commission may make the necessary determination based on the information it has available.**

(d)-(i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Mary Ross McDonald

Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas

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For further information, please call: (512) 463-7008

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Criteria for Designating Areas as Unsuitable for Surface Coal Mining Operations

16 TAC §12.76

The amendment is proposed under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the proposed new sections and amendments:

§12.76. *Land Exempt From Designation As Unsuitable For Surface Coal Mining Operations.*

The requirements of this subchapter (relating to Lands Unsuitable for Mining) do not apply to:

(1) lands on which surface coal mining operations were being conducted on **August 3, 1977** [the date of enactment of the Act];

(2)-(3) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Process for Designating Areas as Unsuitable for Surface Coal Mining Operation

16 TAC §12.83

The amendment is proposed under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the proposed new sections and amendments:

§12.83. *Data Base and Inventory System Requirements.*

(a)-(b) (No change.)

(c) The Commission shall add to the data base and inventory system information:

(1) on potential coal resources of the state, demand for those resources, the environment, the economy and the supply of coal, sufficient to enable the Commission to prepare the statements required by **§12.81(e)** [§12.81(c)] of this title (relating to Procedures: Hearing Requirements); and

(2) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Subchapter G. Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Procedures Systems

General Requirements for Permits and Permit Applications

16 TAC §12.107

The amendment is proposed under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the proposed new sections and amendments:

§12.107. *Permit Applications: General Requirements For Format and Contents.*

(a)-(e) (No change.)

(f) Maps and plans shall meet the following general requirements:

(1) maps submitted with applications shall be presented in a consolidated format, to the extent possible, and shall include all the types of information that are set forth on topographic maps of the U.S. Geological Survey of the 1:24,000 scale series. Maps of the permit area shall be at a scale of 1:6,000 or larger. Maps of the [remainder of the mine plan area and the] adjacent **area** [areas] shall clearly show the lands and waters within those areas and be in a scale of 1:24,000 or larger; and

(2) (No change.)

(g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Surface Mining Permit Applications - Minimum Requirements for Legal, Financial, Compliance, and Related Information

16 TAC §12.116

The amendment is proposed under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the proposed new sections and amendments:

§12.116. *Identification of Interests and Compliance Information.*

An application filed after the adoption of this rule shall contain the following information, except that the submission of a social security number is voluntary:

(1)-(12) (No change.)

(13) [For any violations of a provision of the Act, Federal Act, or of any law, rule or regulation of the United States, or of any state law, rule or regulation enacted pursuant to federal law, rule or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation,] a list of all violation notices received by the applicant during the three-year period preceding the application date, and a list of all **outstanding** [unabated cessation orders and unabated air- and water-quality] violation notices received prior to the date of the application by any surface coal mining [and reclamation] operation owned or controlled by either the applicant or by any person who is **deemed or presumed to own or control the applicant under the definition of "owned or controlled" and "owns or controls" in §12.3 of this title (relating to Definitions).** For each violation notice issued pursuant to §12.678 of this title (relating to Notices of Violation) or under a federal or state program for which the abatement

period has not expired, the applicant shall certify that such notice of violation is in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation [owns or controls the applicant]. For each violation notice [or cessation order] reported, the lists shall include the following information, as applicable:

(A)-(B) (No change.)

(C) the date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in **this** paragraph [(13) of this section] to obtain administrative or judicial review of the violation;

(D) (No change.)

(E) the actions, if any, taken by any person identified in **this** paragraph [(13) of this section] to abate the violation; and

(14) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Surface Mining Permit Applications - Minimum Requirements for Information on Environmental Resources

16 TAC §§12.124-12.131, 12.135-12.137

The amendments are proposed under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the proposed new sections and amendments:

§12.124. *General Requirements.*

Each permit application shall include a description of the existing, premining environmental resources within the proposed **permit** [mine plan] area and adjacent areas that may be affected or impacted by the proposed surface mining activities.

§12.125. *General Environmental Resources Information.*

Each application shall describe and identify:

(1) the size, sequence, and timing of the subareas of the **permit and adjacent areas** [mine plan area] for which it is anticipated that individual permits for mining will be requested over the estimated total life of the proposed surface mining activities; and

(2) (No change.)

§12.126. *Description of Hydrology and Geology: General Requirements.*

(a) Each application shall contain a description of the geology, hydrology, and water quality and quantity of all lands within the

proposed **permit** [mine plan] area, the adjacent areas, and the general area. The description shall include information on the characteristics of all surface and ground waters within the general area, and any water which will flow into or receive discharges of water from the general area. The description shall include geologic information in sufficient detail to assist in determining:

(1)-(3) (No change.)

(b) The description shall be prepared according to this section and §§12.127-12.130 of this title (relating to Geology Description, to Ground-Water Information, to Surface-Water Information, and to Alternative Water Supply Information), and conform to the following:

(1) information on hydrology, water quality and quantity, and geology related to hydrology of areas outside the proposed **permit** [mine plan] area and within the general area shall be provided by the Commission, to the extent that this data is available from an appropriate federal or state agency; and

(2)-(3) (No change.)

(c) (No change.)

(d) **All water-quality analyses performed to meet the requirements of this chapter (relating to Coal Mining Regulations) shall be conducted according to the methodology in the 15th edition of *Standard Methods for the Examination of Water and Wastewater*, which is incorporated by reference, or the methodology in 40 CFR Parts 136 and 434.**

§12.127. *Geology Description.*

(a) (No change.)

(b) **The geologic description shall include analyses** [Analyses] of samples collected from test borings, drill cores, or fresh unweathered, uncontaminated samples from rock outcrops from the permit area, down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining [shall provide the following data in the description]. **The analyses shall result in the following:**

(1)-(4) (No change.)

(c) **If determined to be necessary to protect the hydrologic balance or to meet the performance standards of this chapter (relating to Coal Mining Regulations), the Commission may require the collection, analysis, and description of geologic information in addition to that required by subsection (b) of this section.** [If required by the Commission, test borings or core samplings shall be collected and analyzed to greater depths within the proposed permit area, or for areas outside the proposed permit area to provide for evaluation of the impact of the proposed activities on the hydrologic balance.]

(d) (No change.)

§12.128. *Ground-Water Information.*

(a) The application shall contain a description of the ground-water hydrology for the proposed **permit area** [mine plan] and adjacent area, including, at a minimum:

(1) the depth below the surface and the horizontal extent of the water table and aquifers;

(2) the lithology and thickness of the aquifers;

(3) **the location and ownership of existing wells, springs, and other ground-water resources** [known uses of the water in the aquifer and water table]; and

(4) **seasonal quality and quantity of ground water and usage. Water quality descriptions shall include, at a minimum, total dissolved solids or specific conductance corrected to 25 degrees C, pH, total iron, and total manganese. Ground-water quantity descriptions shall include, at a minimum, approximate rates of discharge or usage and depth to the water in the coal seam, and each water-bearing stratum above and potentially impacted stratum below the coal seam.** [the quality of subsurface water, if encountered.]

(b) The application shall contain additional information which describes the recharge[,] and storage [, and discharge] characteristics of aquifers [and the quality and quantity of ground water, according to the parameters and in the detail required by the Commission].

§12.129. *Surface-Water Information.*

[(a)] Surface-water information shall be described, including the name of the watershed which will receive water discharges, the **name, location , ownership, and description** of all surface-water bodies such as streams, lakes, ponds, **impoundments**, and springs, the location of any water discharge into any surface body of water **in the proposed permit and adjacent areas, and information on surface-water** [, and descriptions of surface drainage systems sufficient to identify, in detail, the seasonal variations in water] quantity and quality **sufficient to demonstrate seasonal variation and water usage. Water quantity and quality descriptions shall include, at a minimum:** [within the proposed mine plan and adjacent areas.]

[(b) Surface-water information shall include:]

(1) **water-quantity data on present water usages, and** minimum, maximum, and average discharge conditions which identify critical low flow and peak discharge rates of streams sufficient to identify seasonal variations **in flow rates;** and

(2) water-quality data to identify the characteristics of surface waters in, discharging into, or which will receive flows from surface or ground water from affected areas within the proposed **permit** [mine plan] area, sufficient to identify seasonal variations, showing:

(A) total dissolved solids in milligrams per liter **or specific conductance corrected to 25 degrees C;**

(B) (No change.)

(C) acidity **and alkalinity information if there is a potential for acid drainage from the proposed surface mining operation;**

(D)-(G) (No change.)

§12.130. *Alternative Water Supply Information.*

The application shall identify the extent to which the proposed surface mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed **permit** [mine plan] or adjacent areas **which is used** for domestic, agricultural, industrial, or other legitimate use. If contamination, diminution, or interruption may result, then the **application** [description] shall identify the alternative

sources of water supply that could be developed to replace the existing **water** sources , **including the suitability of alternative water sources for existing premine uses and approved postmine land uses.**

§12.131. *Climatological Information.*

(a) When requested by the Commission, the application shall contain a statement of the climatological factors that are representative of the proposed **permit** [mine plan] area, including:

(1)-(3) (No change.)

(b) (No change.)

§12.135. *Land-Use Information.*

(a) (No change.)

(b) The application shall identify whether the proposed **permit** [mine plan] area has been previously mined, and, if so, include the following information, if available:

(1)-(5) (No change.)

(c) The application shall contain a description of the existing land uses and land-use classifications under local law, if any, of the proposed **permit** [mine plan] and adjacent areas.

§12.136. *Maps: General Requirements.*

The permit application shall include maps showing:

(1)-(6) (No change.)

(7) the locations of water supply intakes for current users of surface water flowing into, out of, and within a hydrologic area defined by the Commission, and those surface waters which will receive discharges from affected areas in the proposed **permit** [mine plan] area;

(8) (No change.)

(9) the boundaries of any public park and locations of any cultural or historical resources listed or eligible for listing in the National Register of Historic Places, and known archeological sites within the **permit** [mine plan] or adjacent areas;

(10) (No change.)

(11) any land within the proposed **permit** [mine plan] area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act; and

(12) (No change.)

§12.137. *Cross Sections, Maps, and Plans.*

(a) The application shall include cross sections, maps, and plans showing:

(1)-(3) (No change.)

(4) all coal crop lines and the strike and dip of the coal to be mined within the proposed **permit** [mine plan] area;

(5) location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed **permit** [mine plan] and adjacent areas;

(6) location and extent of subsurface water, if encountered, within the proposed **permit** [mine plan] and adjacent areas;

(7) location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drains, and irrigation ditches within the proposed **permit** [mine plan] and adjacent areas;

(8) location and extent of existing or previously surface-mined areas within the proposed **permit** [mine plan] area;

(9) (No change.)

(10) location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the **permit** [mine plan] area and adjacent area; and

(11) (No change.)

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Surface Mining Permit Applications - Minimum Requirements for Reclamation and Operation Plan

16 TAC §§12.139, 12.142, 12.145, 12.146, 12.148, 12.150

The amendments are proposed under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the proposed new sections and amendments:

§12.139. *Operation Plan: General Requirements.*

Each application shall contain a description of the mining operations proposed to be conducted during the life of the mine within the proposed **permit** [mine plan] area, including, at a minimum, the following:

(1)-(2) (No change.)

§12.142. *Operation Plan: Maps and Plans.*

Each application shall contain maps and plans of the proposed **permit** [mine plan] and adjacent areas as follows:

(1) (No change.)

(2) the following shall be shown for the proposed permit area unless specifically required for the **permit and** [mine plan area or] adjacent area by the requirements of this section:

(A) (No change.)

(B) the area of land to be affected within the proposed **permit** [mine plan] area, according to the sequence of mining and reclamation;

(C)-(J) (No change.)

(K) location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with **§12.148 of this title (relating to Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments)** [§12.145 of this title (relating to Reclamation Plan: General Requirements)], and fill area for the disposal of excess spoil in accordance with §12.153 of this title (relating to Disposal of Excess Spoil);

(3) **except as provided in §12.148(a)(2) and (3) of this title, §12.153(a) of this title (relating to Disposal of Excess Spoil), §12.363(b) of this title (relating to Disposal of Excess Spoil: General Requirements), §12.366(b)(1) of this title (relating to Disposal of Excess Spoil: Durable Rock Fills), and §12.368(c) of this title (relating to Coal Processing Waste Banks: General Requirements)**, maps, plans, and cross-sections required under paragraph (2)(D), (E), (F), (J), and (K) of this subsection shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer, or professional geologist, with assistance from experts in related fields such as land surveying and landscape architecture . [, except that:]

[(A) maps, plans and cross-sections for sedimentation ponds may only be prepared by a qualified registered professional engineer; and]

[(B) maps, plans, and cross-sections of spoil disposal facilities may only be prepared by a qualified registered professional engineer.]

(4) **a description of and plans and drawings for each support facility to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall include a map, appropriate cross sections, design drawings, and specifications sufficient to demonstrate compliance with §12.403 of this title (relating to Support Facilities) for each facility.**

§12.145. *Reclamation Plan: General Requirements.*

(a) (No change.)

(b) Each plan shall contain the following information for the proposed permit area:

(1)-(4) (No change.)

(5) a plan for revegetation as required in §§12.390-12.393, **and** 12.395[, and 12.396] of this title (relating to Revegetation: General Requirements, to Revegetation: Use of Introduced Species, to Revegetation: Timing, to Revegetation: Mulching and Other Stabilizing Practices, **and** to Revegetation: Standards for Success [, and to Revegetation: Tree and Shrub Stocking for Forest Land]), including, but not limited to, descriptions of the:

(A)-(G) (No change.)

(6)-(9) (No change.)

§12.146. *Reclamation Plan: Protection of Hydrologic Balance.*

(a) General requirements. **The application shall include a hydrologic reclamation plan, with appropriate maps and descriptions, indicating how the relevant requirements of this chapter (relating to Coal Mining Regulations), including §§12.339-12.341, 12.346, 12.348 and 12.349, and 12.350-12.354 of this title (relating to Hydrologic Balance: General Requirements, to Hydrologic Balance: Water-Quality Standards and Effluent Limitations, to Hydrologic Balance: Diversions, to Hydrologic**

Balance: Acid-Forming and Toxic-Forming Spoil, to Hydrologic Balance: Ground-Water Protection, to Hydrologic Balance: Surface-Water Protection, to Hydrologic Balance: Surface and Ground-Water Monitoring, to Hydrologic Balance: Transfer of Wells, to Hydrologic Balance: Water Rights and Replacement, to Hydrologic Balance: Discharge of Water Into an Underground Mine, and to Hydrologic Balance: Postmine Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities), will be met. [Each plan shall contain a detailed description, with appropriate maps and cross section drawings, of the measures to be taken during and after the proposed surface mining activities, in accordance with §§12.330-12.403 of this title (relating to Permanent Program Performance Standards - Surface Coal Mining Activities). The plan shall be specific to the local hydrologic conditions. It shall contain the steps to be taken during mining and reclamation through bond release to minimize disturbances to the hydrologic balance within the permit and adjacent areas; to prevent material damage outside the permit area; to meet applicable federal and state water-quality laws and regulations; and to protect the rights of present water users. The plan shall specifically address any potential adverse hydrologic consequences identified in the PHC determination prepared under §§12.139-12.154 of this title (relating to Surface Mining Permit Applications - Minimum Requirements for Reclamation and Operation Plan) and shall include preventive and remedial measures. The plan shall identify the measures to be taken to:

(1) protect the quality of surface- and ground-water systems, both within the proposed **permit** [mine plan] and adjacent areas, from the adverse effects of the proposed surface mining activities, or to provide alternative sources of water in accordance with §12.130 and §12.352 of this title (relating to Alternative Water Supply Information, and to Hydrologic Balance: Water Rights and Replacement), where the protection of quality cannot be ensured;

(2) protect or replace the rights of present users of surface and ground water;

(3) protect the quantity of surface and ground water both within the proposed **permit** [mine plan] area and adjacent area from adverse effects of the proposed surface mining activities, or to provide alternative sources of water in accordance with §12.130 and §12.352 of this title (relating to Alternative Water Supply Information, and to Hydrologic Balance: Water Rights and Replacement), where the protection of quantity cannot be ensured;

(4)-(6) (No change.)

(7) control drainage; and

(8) restore approximate premining recharge capacity . [; and]

[(9) provide a plan for the collection, recording, and reporting of ground- and surface-water quality and quantity data, according to §12.350 of this title (relating to Hydrologic Balance: Surface- and Ground-Water Monitoring.)

(b) Ground-water monitoring plan.

(1) The application shall include a ground-water monitoring plan based upon the PHC determination required under subsection (d) of this section and the analysis of all baseline hydrologic, geologic, and other information in the permit application. The plan shall provide for the monitoring of parameters

that relate to the suitability of the ground water for current and approved postmine land uses and to the objectives for protection of the hydrologic balance as set forth in subsection (a) of this section. It shall identify the quantity and quality parameters to be monitored, sampling frequency, and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance. At a minimum, total dissolved solids or specific conductance corrected to 25 degrees C, pH, total iron, total manganese, and water levels shall be monitored and data submitted to the Commission at least every three months for each monitoring location. The Commission may require additional monitoring.

(2) If the applicant can demonstrate by the use of the PHC determination and other available information that a particular water-bearing stratum in the proposed permit and adjacent areas is not one which serves as an aquifer which significantly ensures the hydrologic balance within the cumulative impact area, then monitoring of that stratum may be waived by the Commission.

[(b) Analyses requirements. All water-quality analyses performed to meet the requirements of this section shall be conducted according to the methodology in the 15th edition of *Standard Methods for the Examination of Water and Wastewater*, which is incorporated by reference for the methodology in 40 CFR Parts 136 and 434.]

(c) Surface-water monitoring plan.

(1) The application shall include a surface-water monitoring plan based upon the PHC determination required under subsection (d) of this section and the analysis of all baseline hydrologic, geologic, and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the surface water for current and approved postmine land uses, and to the objectives for protection of the hydrologic balance as set forth in subsection (a) of this section, as well as the effluent limitations found at 40 CFR Part 434.

(2) The plan shall identify the surface-water quantity and quality parameters to be monitored, sampling frequency, and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance.

(A) At all monitoring locations in the surface-water bodies such as streams, lakes, and impoundments that are potentially impacted or into which water will be discharged and at upstream monitoring locations, the total dissolved solids or specific conductance corrected to 25 degrees C, total suspended solids, pH, total iron, total manganese, and flow shall be monitored.

(B) For point-source discharges, monitoring shall be conducted in accordance with 40 CFR Parts 122, 123 and 434 and as required by the National Pollutant Discharge Elimination System permitting authority.

(3) The monitoring reports shall be submitted to the Commission every three months. The Commission may require additional monitoring.

[(c) Probable Hydrologic Consequences Information. The description shall include a determination of the probable hydrologic consequences of the proposed surface mining activities on the proposed mine plan area and adjacent area, with respect to the

hydrologic regime, and the quantity and quality of water in surface- and ground-water systems under all seasonal conditions, including:]

[(1) the name, location, ownership, and description of all surface-water bodies such as streams, lakes, and impoundments, the location of any discharge into any surface-water body in the proposed permit and adjacent areas, and information on surface-water quality and quantity sufficient to demonstrate seasonal variation and water usage. Water-quality descriptions shall include, at a minimum, baseline information on total suspended solids, total dissolved solids or specific conductance corrected to 25 degrees C, pH, total iron, and total manganese. Baseline acidity and alkalinity information shall be provided if there is a potential for acid drainage from the proposed mining operation. Water-quantity descriptions shall include, at a minimum, baseline information on seasonal flow rates;]

[(2) information on water availability and alternative water sources, including the suitability of alternative water sources for existing premining uses and approved postmining land uses, if the PHC determination indicates that the proposed mining operation may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial or other legitimate purposes; and]

[(3) supplemental information as required by the Commission, if the PHC indicates that adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of ground or surface water supplies.]

(d) Probable hydrologic consequences determination.

(1) The **application** [description] shall include a determination of the probable hydrologic consequences (PHC) of the proposed operation upon the quality and quantity of surface and ground water under seasonal flow conditions for the proposed permit and adjacent areas.

(2)-(4) (No change.)

(5) If the determination of the probable hydrologic consequences (PHC) required by this subsection indicates adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of ground-water or surface-water supplies, then information supplemental to that required under §§12.128 and 12.129 of this title (relating to Ground-Water Information, and to Surface-Water Information) shall be provided to evaluate such probable hydrologic consequences and to plan remedial and reclamation activities. Such supplemental information may be based upon drilling, aquifer tests, hydrogeologic analysis of the water-bearing strata, flood flows, or analysis of other water quality and quantity characteristics. Information shall be provided on water availability and alternative water sources, including the suitability of alternative water sources for existing premining uses and approved postmining land uses.

(e) (No change.)

§12.148. *Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments.*

(a) General. Each application shall include a general plan for each proposed sedimentation pond, water impoundment, and coal

processing waste bank, dam, or embankment within the proposed **permit** [mine plan] area.

(1)-(2) (No change.)

(3) Each detailed design plan for a structure that does not meet the size or other criteria of 30 CFR 77.216(a) shall:

(A) be prepared by or under the direction of, and certified by a qualified registered professional engineer [or registered land surveyor, except that all coal processing waste dams and embankments covered by §§12.376-12.378 of this title (relating to Coal Processing Waste: Dams and Embankments: General Requirements, to Coal Processing Waste: Dams and Embankments: Site Preparation, and to Coal Processing Waste: Dams and Embankments: Design and Construction) shall be certified by a qualified registered professional engineer];

(B)-(D) (No change.)

(b) Sedimentation ponds. Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of §12.344 of this title (relating to Hydrologic Balance: Sedimentation Ponds). Any sedimentation pond or earthen structure which will remain in the proposed **permit** [mine plan] area as a permanent water impoundment shall also be designed to comply with the requirements of §12.347 of this title (relating to Hydrologic Balance: Permanent and Temporary Impoundments). Each plan shall, at a minimum, comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 77.216-2.

(c) Permanent and temporary impoundments.

(1) Permanent and temporary impoundments shall be designed to comply with the requirements of §12.347 of this title (relating to Hydrologic Balance: Permanent and Temporary Impoundments). [Each plan shall comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 77.216-2.]

(2) Each plan for an impoundment meeting the size or other criteria of the Mine Safety and Health Administration shall comply with the requirements of 30 CFR 77.216-1 and 30 CFR 77.216-2. The plan required to be submitted to the District Manager of MSHA under 30 CFR 77.216 shall be submitted to the Commission as part of the permit application in accordance with subsection (a) of this section.

(3) An impoundment not meeting the size or other criteria applicable under §12.347(a) of this title (relating to Hydrologic Balance: Permanent and Temporary Impoundments) shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions.

(d) (No change.)

(e) Coal processing waste dams and embankments. Coal **mine** [processing] waste dams and embankments shall be designed to comply with the requirements of §§12.376-12.378 of this title (relating to Coal **Mine** [Processing] Waste: Dams and Embankments: General Requirements, to Coal **Mine** [Processing] Waste: Dams and Embankments: Site Preparation, and to Coal **Mine** [Processing] Waste: Dams and Embankments: Design and Construction). Each plan shall comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed

dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(1)-(4) (No change.)

(f) (No change.)

§12.150. Diversions.

Each application shall contain descriptions, including maps and cross sections, of stream channel diversions to be constructed within the proposed permit area to achieve compliance with **§12.341** [§§12.341 and 12.342] of this title (relating to Hydrologic Balance: Diversions [and Conveyance of Overland Flow and Shallow Ground-Water Flow, and Ephemeral Streams, and to Hydrologic Balance: Stream-Channel Diversions]).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Mary Ross McDonald

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For further information, please call: (512) 463-7008



Underground Mining Permit Applications - Minimum Requirements for Information on Environmental Resources

16 TAC §§12.170–12.177, 12.181-12.183

The new section and amendments are proposed under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the proposed new sections and amendments:

§12.170. General Requirements.

Each permit application shall include a description of the existing, premining environmental resources within the proposed **permit** [mine plan] area and adjacent areas that may be affected or impacted by the proposed underground mining activities.

§12.171. General Environmental Resources Information.

Each application shall describe and identify:

(1) the size, sequence, and timing of the subareas of the **permit** [mine plan] area for which it is anticipated that individual permits for mining will be requested over the estimated total life of the proposed underground mining activities; and

(2) (No change.)

§12.172. Description of Hydrology and Geology: General Requirements.

(a) Each application shall contain a description of the geology, hydrology, and water quality and quantity of all lands within the

proposed **permit** [mine plan] area, the adjacent areas, and the general area. The description shall include information on the characteristics of all surface and ground waters within the general area, and any water which will flow into or receive discharges of water from the general area. The description shall include geologic information in sufficient detail to assist in determining:

(1)-(3) (No change.)

(b) The description shall be prepared according to this section and §§12.173-12.175 of this title (relating to Geology Description, to Ground-Water Description, and to Surface-Water Description), and conform to the following:

(1) information on hydrology, water quality and quantity, and geology related to hydrology of areas outside the proposed **permit** [mine plan] area and within the general area shall be provided by the Commission, to the extent that this data is available from an appropriate federal or state agency;

(2)-(3) (No change.)

(c) (No change.)

(d) **All water-quality analyses performed to meet the requirements of this chapter (relating to Coal Mining Regulations) shall be conducted according to the methodology in the 15th edition of *Standard Methods for the Examination of Water and Wastewater*, which is incorporated by reference, or the methodology in 40 CFR Parts 136 and 434.**

§12.173. Geology Description.

(a) A description of the geology of the proposed permit and adjacent areas down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining. This description shall include the areal and structural geology of the permit and adjacent areas, and other parameters which influence the required reclamation and it shall also show how the areal and structural geology may affect the occurrence, availability, movement, quantity and quality of potentially impacted surface and ground water. It shall be based on:

(1) the cross sections, maps, and plans required by §12.183 of this title (relating to Cross-Sections, Maps, and Plans);

(2) the information obtained under subsections (b), (c) and (d) of this section; and

(3) geologic literature and practices.

(b) For any portion of a permit area in which the strata down to the coal seam to be mined will be removed or are already exposed, samples shall be collected and analyzed from test borings; drill cores; or fresh, unweathered, uncontaminated samples from rock outcrops down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the coal seam to be mined which may be adversely impacted by mining. The analyses shall result in the following:

(1) logs showing the lithologic characteristics including physical properties and thickness of each stratum and location of ground water where occurring;

(2) chemical analyses identifying those strata that may contain acid- or toxic-forming, or alkalinity-producing materials and

to determine their content except that the Commission may find that the analysis for alkalinity-producing material is unnecessary; and

(3) chemical analysis of the coal seam for acid- and toxic-forming materials, including the total sulfur and pyritic sulfur, except that the Commission may find that the analysis of pyritic sulfur content is unnecessary.

(c) For lands within the permit and adjacent areas where the strata above the coal seam to be mined will not be removed, samples shall be collected and analyzed from test borings or drill cores to provide the following data:

(1) logs of drill holes showing the lithologic characteristics, including physical properties and thickness of each stratum that may be impacted, and location of ground water where occurring;

(2) chemical analyses for acid- or toxic-forming materials and their content in the strata immediately above and below the coal seam to be mined;

(3) chemical analyses of the coal seam for acid- and toxic-forming materials, including the total sulfur and pyritic sulfur, except that the Commission may find the analysis of pyritic sulfur content is unnecessary; and

(4) for standard room and pillar mining operations, the thickness and engineering properties of clays or soft rock such as clay shale, if any, in the stratum immediately above and below each coal seam to be mined.

(d) If determined to be necessary to protect the hydrologic balance, to minimize or prevent subsidence, or to meet the performance standards of this chapter (relating to Coal Mining Regulations), the Commission may require the collection, analysis and description of geologic information in addition to that required by subsections (a), (b), and (c) of this section.

(e) An applicant may request the Commission to waive in whole or in part the requirements of subsections (b) and (c) of this section. The waiver may be granted only if the Commission finds in writing that the collection and analysis of such data is unnecessary because other information having equal value or effect is available to the Commission in a satisfactory form.

§12.174. Ground-Water Information.

(a) The application shall contain a description of the ground-water hydrology for the proposed **permit** [mine plan] and adjacent **areas** [area], including, at a minimum:

(1)-(2) (No change.)

(3) **the location and ownership of existing wells, springs, and other ground-water resources** [the users of the water in the aquifer and water table]; and

(4) **seasonal quality and quantity of ground-water and usage. Water quality descriptions shall include, at a minimum, total dissolved solids or specific conductance corrected to 25 degrees C, pH, total iron, and total manganese. Ground-water quantity descriptions shall include, at a minimum, approximate rates of discharge or usage and depth to the water in the coal seam, and each water-bearing stratum above and potentially impacted stratum below the coal seam.** [the quality of subsurface water, if encountered.]

(b) The application shall contain additional information which describes the recharge[, and storage [, and discharge] characteristics of aquifers [and the quality and quantity of ground water, according to the parameters and in the detail required by the Commission].

§12.175. Surface-Water Information.

[(a)] Surface-water information shall be described, including the name of the watershed which will receive water discharges, the **name, location, ownership and description** of all surface-water bodies such as streams, lakes, ponds, **impoundments**, and springs, the location of any water discharge into any surface body of water **in the proposed permit and adjacent areas, and information on surface-water** [, and descriptions of surface drainage systems sufficient to identify, in detail, the seasonal variations in water] quantity and quality **sufficient to demonstrate seasonal variation and water usage.** [within the proposed mine plan and adjacent areas.]

[(b)] **Water quantity and quality descriptions shall include, at a minimum** [Surface-water information shall include]:

(1) **water-quantity data on present water usages, and minimum, maximum, and average discharge conditions which identify critical low flows and peak discharge rates of streams sufficient to identify seasonal variations in flow rates;** and

(2) water-quality data to identify the characteristics of surface waters in, discharging into, or which will receive flows from surface or ground water from affected areas within the proposed **permit** [mine plan] area, sufficient to identify seasonal variations, showing:

(A) total dissolved solids in milligrams per liter **or specific conductance corrected to 25 degrees C;**

(B) (No change.)

(C) **acidity and alkalinity information if there is a potential for acid drainage from the proposed underground mining operation;**

(D)-(G) (No change.)

§12.176. Alternative Water Supply Information.

The application shall identify the extent to which the proposed underground mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed **permit** [mine plan] or adjacent area for domestic, agricultural, industrial, or other legitimate use. If contamination, diminution, or interruption may result, then the description shall identify the alternative sources of water supply that could be developed to replace the existing sources.

§12.177. Climatological Information.

(a) When requested by the Commission, the application shall contain a statement of the climatological factors that are representative of the proposed **permit** [mine plan] area, including:

(1)-(3) (No change.)

(b) (No change.)

§12.181. Land-Use Information.

(a) (No change.)

(b) The application shall indicate whether the proposed **permit** [mine plan] area has been previously mined, and, if so, the following information, if available:

(1)-(5) (No change.)

(c) The application shall contain a description of the existing land uses and land-use classifications under local law, if any, of the proposed **permit** [mine plan] and adjacent areas.

§12.182. Maps: General Requirements.

The permit application shall include maps showing:

(1)-(6) (No change.)

(7) the locations of water supply intakes for current users of surface waters flowing into, out of, and within a hydrologic area defined by the Commission, and those surface waters which will receive discharges from affected areas in the proposed **permit** [mine plan] area;

(8) (No change.)

(9) the boundaries of any public park and locations of any cultural or historical resources listed or eligible for listing in the National Register of Historic Places, and known archeological sites within the **permit** [mine plan] or adjacent areas;

(10) (No change.)

(11) any land within the proposed **permit** [mine plan] area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act; and

(12) (No change.)

§12.183. Cross-Sections, Maps, and Plans.

(a) The application shall include cross sections, maps, and plans showing:

(1)-(3) (No change.)

(4) all coal crop lines and the strike and dip of the coal to be mined within the proposed **permit** [mine plan] area;

(5) location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed **permit** [mine plan] and adjacent areas;

(6) location and extent of subsurface water, if encountered, within the proposed **permit** [mine plan] or adjacent areas, including, but not limited to areal and vertical distribution of aquifers, and portrayal of seasonal differences of head in different aquifers on cross sections and contour maps;

(7) location of surface-water bodies such as streams, lakes, ponds, springs, constructed or natural drains, and irrigation ditches within the proposed **permit** [mine plan] and adjacent areas;

(8) location and extent of existing or previously surface-mined areas within the proposed **permit** [mine plan] area;

(9) (No change.)

(10) location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the **permit** [mine plan] area and adjacent areas; and

(11) (No change.)

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Mary Ross McDonald

Deputy General Counsel, Office of General Counsel

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16 TAC §12.173

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the proposed repeal:

§12.173. Geology Description.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Underground Mining Permit Applications - Minimum Requirements for Reclamation and Operation Plan

16 TAC §§12.185, 12.188, 12.190, 12.196, 12.197

The amendments are proposed under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the proposed new sections and amendments:

§12.185. Operation Plan: General Requirements.

Each application shall contain a description of the mining operations proposed to be conducted during the life of the mine within the proposed **permit** [mine plan] area, including, at a minimum, the following:

(1)-(2) (No change.)

§12.188. Reclamation Plan: Protection of Hydrologic Balance.

(a) General requirements. **The application shall include a hydrologic reclamation plan descriptions, indicating how the relevant requirements of this chapter (relating to Coal Mining Regulations), including §§12.509-12.511, 12.516, 12.518 and 12.519, and 12.520-12.524 of this title (relating to Hydrologic Balance: General Requirements, to Hydrologic Balance: Water-Quality Standards and Effluent Limitations, to Hydrologic Balance: Diversions, to Hydrologic Balance: Acid-Forming and Toxic-Forming Spoil, to Hydrologic Balance: Ground-Water Protection, to Hydrologic Balance: Surface-Water Protection, to Hydrologic Balance: Surface and Ground-Water Monitoring, to Hydrologic Balance: Transfer of Wells, to Hydrologic Balance: Water Rights and Replacement, to Hydrologic Balance: Discharge of Water Into an Underground Mine, and to Hydrologic Balance: Postmine Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities), will be met.** [Each plan shall contain a detailed description, with appropriate maps and cross-section drawings, of the measures to be taken during and after the proposed surface mining activities, in accordance with §§12.500-12.572 of this title (relating to Permanent Program Performance Standards - Underground Mining Activities.) The plan shall be specific to the local hydrologic conditions. It shall contain the steps to be taken during mining and reclamation through bond release to minimize disturbances to the hydrologic balance within the permit and adjacent areas; to prevent material damage outside the permit area; to meet applicable federal and state water-quality laws and regulations; and to protect the rights of present water users. The plan shall specifically address any potential adverse hydrologic consequences identified in the PHC determination prepared under §§12.185-12.198 of this title (relating to Underground Mining Permit Applications - Minimum Requirements for Reclamation and Operation Plan) and shall include preventive and remedial measures. The plan shall identify the measures to be taken to:

(1) protect the quality of surface- and ground-water systems, both within the proposed **permit** [mine plan] area and adjacent areas, from the adverse effects of the proposed underground mining activities, **or to provide alternative sources of water, in accordance with §12.176 and §12.521 of this title (relating to Alternative Water Supply Information, and to Hydrologic Balance: Water Rights and Replacement), where the protection of quality cannot be ensured ;**

(2) protect **or replace** the rights of present users of surface and ground water;

(3) protect the quantity of surface and ground water both within the proposed **permit** [mine plan] area and adjacent area from adverse effects of the proposed underground mining activities, or to provide alternative sources of water, in accordance with §12.176 and §12.521 (relating to Alternative Water Supply Information, and to Hydrologic Balance: Water Rights and Replacement), where the protection of quantity cannot be ensured;

(4)-(7) (No change.)

(8) restore approximate premining recharge capacity; **and**

[(9) provide a plan for the collection, recording, and reporting of ground- and surface-water quality and quantity data, according to §12.519 of this title (relating to Hydrologic Balance: Surface and Ground-Water Monitoring); and]

(9) [(10)] protect the quality of water by locating openings for mines in accordance with §12.518 of this title (relating to Hydrologic Balance: Underground Mine Entry and Access Discharges).

(b) Ground-water monitoring plan.

(1) The application shall include a ground-water monitoring plan based upon the PHC determination required under subsection (d) of this section and the analysis of all baseline hydrologic, geologic, and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the ground water for current and approved postmine land uses and to the objectives for protection of the hydrologic balance as set forth in subsection (a) of this section. It shall identify the quantity and quality parameters to be monitored, sampling frequency, and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance. At a minimum, total dissolved solids or specific conductance corrected to 25 degrees C, pH, total iron, total manganese, and water levels shall be monitored and data submitted to the Commission at least every three months for each monitoring location. The Commission may require additional monitoring.

(2) If the applicant can demonstrate by the use of the PHC determination and other available information that a particular water-bearing stratum in the proposed permit and adjacent areas is not one which serves as an aquifer which significantly ensures the hydrologic balance within the cumulative impact area, then monitoring of that stratum may be waived by the Commission.

[(b) Analyses requirements. All water-quality analyses performed to meet the requirements of this section shall be conducted according to the methodology in the 15th edition of *Standard Methods for the Examination of Water and Wastewater*, which is incorporated by reference for the methodology in 40 CFR Parts 136 and 434.]

(c) Surface-water monitoring plan.

(1) The application shall include a surface-water monitoring plan based upon the PHC determination required under subsection (d) of this section and the analysis of all baseline hydrologic, geologic, and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the surface water for current and approved postmine land uses and to the objectives for protection of the hydrologic balance as set forth in subsection (a) of this section, as well as the effluent limitations found at 40 CFR Part 434.

(2) The plan shall identify the surface-water quantity and quality parameters to be monitored, sampling frequency, and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance.

(A) At all monitoring locations in the surface-water bodies such as streams, lakes, and impoundments that are potentially impacted or into which water will be discharged and at upstream monitoring locations, the total dissolved solids or specific conductance corrected to 25 degrees C, total suspended solids, pH, total iron, total manganese, and flow shall be monitored.

(B) For point-source discharges, monitoring shall be conducted in accordance with 40 CFR Parts 122, 123 and 434 and as required by the National Pollutant Discharge Elimination System permitting authority.

(3) The monitoring reports shall be submitted to the Commission every three months. The Commission may require additional monitoring.

[(c) Probable hydrologic consequences information. The description shall include a determination of the probable hydrologic consequences of the proposed surface mining activities, on the proposed mine plan area and adjacent area, with respect to the hydrologic regime and the quantity and quality of water in surface and ground water systems under all seasonal conditions, including:

[(1) the name, location, ownership, and description of all surface-water bodies such as streams, lakes, and impoundments, the location of any discharge into any surface-water body in the proposed permit and adjacent areas, and information on surface-water quality and quantity sufficient to demonstrate seasonal variation and water usage. Water quality descriptions shall include, at a minimum, baseline information on total suspended solids, total dissolved solids or specific conductance corrected to 25 degrees C, pH, total iron, and total manganese. Baseline acidity and alkalinity information shall be provided if there is a potential for acid drainage from the proposed mining operation. Water-quantity descriptions shall include, at a minimum, baseline information on seasonal flow rates;

[(2) information on water availability and alternative water sources, including the suitability of alternative water sources for existing premining uses and approved postmining land uses, if the PHC determination indicates that the proposed mining operation may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial or other legitimate purposes; and

[(3) supplemental information as required by the Commission, if the PHC indicates that adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of ground or surface water supplies.]

(d) Probable hydrologic consequences determination.

(1) The **application** [description] shall contain a determination of the probable hydrologic consequences (PHC) of the proposed operation upon the quality and quantity of surface and ground water under seasonal flow conditions of the proposed permit and adjacent areas.

(2)-(4) (No change.)

(5) If the determination of the probable hydrologic consequences (PHC) required this subsection indicates adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of ground-water or surface-water supplies, then information supplemental to that required under §12.174 and §12.175 of this title (relating to Ground-Water Information, and to Surface-Water Information), shall be provided to evaluate such probable hydrologic consequences and to plan remedial and reclamation activities. Such supplemental information may be based upon drilling, aquifer

tests, hydrogeologic analysis of the water-bearing strata, flood flows, or analysis of other water quality and quantity characteristics. Information shall be provided on water availability and alternative water sources, including the suitability of alternative water sources for existing premining uses and approved postmining land uses.

(e) (No change.)

(f) Additional Requirements. Each plan shall contain a detailed description, with appropriate drawings, of permanent entry seals and down-slope barriers designed to ensure stability under anticipated hydraulic heads developed while promoting mine inundation after mine closure for the proposed **permit** [mine plan] area.

§12.190. *Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments.*

(a) General. Each application shall include a general plan for each proposed sedimentation pond, water impoundment, and coal processing waste bank, dam, or embankment within the proposed **permit** [mine plan] area.

(1)-(2) (No change.)

(3) Each detailed design plan for a structure that does not meet the size or other criteria of 30 CFR 77.216(a) shall:

(A) be prepared by, or under the direction of, and certified by a qualified registered professional engineer [or registered land surveyor except that all coal processing waste dams and embankments covered by §§12.543-12.545 of this title (relating to Coal **Mine** [Processing] Waste: Dams and Embankments: General Requirements, to Coal **Mine** [Processing] Waste: Dams and Embankments: Site Preparation, and to Coal **Mine** [Processing] Waste: Dams and Embankments: Design and Construction), shall be certified by a qualified registered professional engineer];

(B)-(D) (No change.)

(b) Sedimentation ponds.

(1) Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of §12.514 of this title (relating to Hydrologic Balance: Sedimentation Ponds). Any sedimentation pond or earthen structure which will remain on the proposed **permit** [mine plan] area as a permanent water impoundment shall also be designed to comply with the requirements of §12.517 of this title (relating to Hydrologic Balance: Permanent and Temporary Impoundments).

(2) (No change.)

(c) Permanent and temporary impoundments.

(1) Permanent and temporary impoundments shall be designed to comply with the requirements of §12.517 of this title (relating to Hydrologic Balance: Permanent and Temporary Impoundments). [Each plan shall comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 77.216-2.]

(2) Each plan for an impoundment meeting the size or other criteria of the Mine Safety and Health Administration shall comply with the requirements of 30 CFR 77.216-1 and 30 CFR 77.216-2. The plan required to be submitted to the District Manager of MSHA under 30 CFR 77.216 shall be submitted to

the Commission as part of the permit application in accordance with subsection (a) of this section.

(3) An impoundment not meeting the size or other criteria applicable under §12.517(a) of this title (relating to Hydrologic Balance: Permanent and Temporary Impoundments) shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions.

(d) Coal **mine** [processing] waste banks. Coal **mine** [processing] waste banks shall be designed to comply with the requirements of §§12.535-12.538 of this title (relating to Coal **Mine** [Processing] Waste Banks: General Requirements, to Coal **Mine** [Processing] Waste Banks: Site Inspection, to Coal **Mine** [Processing] Waste Banks: Water-Control Measures, and to Coal **Mine** [Processing] Waste Banks: Construction Requirements).

(e) Coal **mine** [processing] waste dams and embankments. Coal **mine** [processing] waste dams and embankments shall be designed to comply with the requirements of §§12.543 and 12.544 of this title (relating to Coal **Mine** [Processing] Waste: Dams and Embankments: General Requirements, and to Coal **Mine** [Processing] Waste: Dams and Embankments: Site Preparation). Each plan shall comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(1)-(4) (No change.)

(f) (No change.)

§12.196. *Diversions.*

Each application shall contain descriptions, including maps and cross sections, of stream-channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with §12.511 [§12.511 and §12.512] of this title (relating to Hydrologic Balance: Diversions [and Conveyance of Overland Flow, Shallow Ground-Water Flow, and Ephemeral Streams, and to Hydrologic Balance: Stream-Channel Diversions]).

§12.197. *Operation Plan: Maps and Plans.*

Each application shall contain maps, plans, and cross sections of the proposed **permit** [mine plan] and adjacent areas as follows:

(1) (No change.)

(2) the following shall be shown for the proposed permit area unless specifically required for the **permit and** [mine plan area or] adjacent area by the requirements of this section:

(A) (No change.)

(B) the area of land to be affected within the proposed **permit** [mine plan] area, according to the sequence **of** [or] mining and reclamation;

(C)-(I) (No change.)

(J) location of each sedimentation pond, permanent water impoundment, coal **mine** [processing] waste bank, and coal **mine** [processing] waste dam and embankment, in accordance with §12.190 of this title (relating to Reclamation Plan: Ponds,

Impoundments, Banks, Dams, and Embankments) and disposal areas for underground development waste and excess spoil in accordance with §12.193 of this title (relating to Underground Development Waste/Return of Coal Processing Waste to Underground Workings).

(K)-(L) (No change.)

(M) location of each facility that will remain on the proposed permit area as a permanent feature, after the completion of underground mining activities. [; and]

(3)except as provided in §§12.190(a)(2) and (3), 12.193(a), 12.531(b), 12.534(b)(1), and 12.535(c) of this title (relating to Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments, to Underground Development Waste/Return of Coal Processing Waste to Underground Workings, to Disposal of Underground Development Waste and Excess Spoil: General Requirements, to Disposal of Underground Development Waste and Excess Spoil: Durable Rock Fills, and to Coal Mine Waste Banks: General Requirements), maps, plans, and cross-sections required under paragraph (2)(D), (E) [(2)(E)] , (F), (J), and (K) of this **subsection** [section] shall be prepared by, or under the direction of , and certified by a qualified **registered** professional engineer, or professional geologist, with assistance from experts in related fields such as land surveying and landscape architecture ; and [, except that:]

[(A) maps, plans and cross-sections for sedimentation ponds may only be prepared by a qualified registered professional engineer; and

[(B) maps, plans, and cross-sections of spoil disposal facilities may only be prepared by a qualified registered professional engineer.]

(4) a description of and plans and drawings for each support facility to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall include a map, appropriate cross sections, design drawings, and specifications sufficient to demonstrate compliance with §12.572 of this title (relating to Support Facilities) for each facility.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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For further information, please call: (512) 463-7008



Requirements for Permits for Special Categories of Mining

16 TAC §12.202

The amendment is proposed under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the proposed new sections and amendments:

§12.202. *Surface Coal Mining and Reclamation Operations on Areas or Adjacent to Areas Including Alluvial Valley Floors In the Arid or Semi-Arid Areas West of the 100th Meridian.*

(a) Alluvial valley floor determination.

(1) Before applying for a permit to conduct, or before conducting surface coal mining and reclamation operations within a valley holding a stream or in a location where the adjacent area includes any stream in the arid or semiarid regions of the United States, the applicant shall either affirmatively demonstrate, based on available data, the presence of an alluvial valley floor, or submit to the Commission the results of a field investigation of the proposed **permit** [mine plan] area and adjacent area. The field investigations shall include sufficiently detailed geologic, hydrologic, land-use, soils, and vegetation studies on areas required to be investigated by the Commission, after consultation with the applicant, to enable the Commission to make an evaluation regarding the existence of the probable alluvial valley floor in the proposed **permit** [mine plan] area or adjacent area and to determine which areas, if any, require more detailed study in order to allow the Commission to make a final determination regarding the existence of an alluvial valley floor. Studies performed during the investigation by the applicant or subsequent studies as required of the applicant by the Commission, shall include an appropriate combination, adapted to site-specific conditions, of:

(A)-(F) (No change.)

(2) (No change.)

(b) Application contents for operations affecting designated alluvial valley floors.

(1) If land within the proposed permit area or adjacent area is identified as an alluvial valley floor and the proposed mining operation may affect an alluvial valley floor or waters that supply alluvial valley floors, the applicant shall submit a complete application for the proposed mining and reclamation operations, to be used by the Commission, together with other relevant information, including the information required by Subsection (a) of this Section, as a basis for approval or denial of the permit. The complete application shall include detailed surveys and baseline data required by the Commission for a determination of:

(A) **the essential hydrologic functions of the alluvial valley floor which might be affected by the mining and reclamation process;** [the characteristics of the alluvial valley floor which are necessary to preserve the essential hydrologic functions during and after mining;]

(B)-(E) (No change.)

(2) (No change.)

(3) **The information required by paragraph (1) of this subsection shall evaluate those factors which contribute to the collecting, storing, regulating and making natural flow of water available for agricultural activities on the alluvial valley floor and shall include, but not be limited to:** [The surveys required by this subsection should identify those geologic, hydrologic, and biologic characteristics of the alluvial valley floor necessary to support the essential hydrologic functions of an alluvial valley floor. Characteristics which support the essential hydrologic functions and

which must be evaluated in a complete application include, but are not limited to:]

(A) **factors contributing to** [characteristics supporting] the function of collecting water which include, but are not limited to:

(i)-(iv) (No change.)

(B) **factors contributing to** [characteristics supporting] the function of storing water which include, but are not limited to:

(i)-(iii) (No change.)

(C) **factors contributing to** [characteristics supporting] the function of regulating the flow of water which include, but are not limited to:

(i)-(iii) (No change.)

(D) **factors** [characteristics] which make water available and which include, but are not limited to, the presence of landforms, including floodplains and terraces, suitable for agricultural activities.

(c) Requirements for approval.

(1) No permit or permit revision application for surface coal mining and reclamation operations on lands located west of the one hundredth meridian west longitude, shall be approved by the Commission, unless the application demonstrates and the Commission finds in writing, on the basis of information set forth in the application that:

(A)-(C) (No change.)

(D) any change in the land use of the lands covered by the proposed **permit** [mine-plan] area from its premining use in or adjacent to alluvial valley floors will not interfere with or preclude the reestablishment of the essential hydrologic functions of the alluvial valley floor.

(2)-(4) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Mary Ross McDonald

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Review, Public Participation, and Approval of Permit Applications and Permit Terms and Conditions

16 TAC §§12.210, 12.215, 12.216, 12.220, 12.221

The amendments are proposed under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the proposed new sections and amendments:

§12.210. Public Availability of Information in Permit Applications on File with the Commission.

(a) **Except as provided by subsection (c) of this section, all applications for permits; revisions; renewals; and transfers; assignments or sales of permit rights on file with the Commission shall be available, at reasonable times, for public inspection and copying.** [Information contained in permit applications on file with the regulatory authority shall be open, upon written request, for public inspection and copying at reasonable times.]

(b) **Except as provided in subsection (c)(1) of this section,**

[(1)] information pertaining to coal seams, test borings, core sampling, or soil samples in permit applications shall be made available for inspection and copying to any person with an interest which is or may be adversely affected . [; and]

[(2)] information in permit applications which pertains only to the analysis of the chemical and physical properties of the coal to be mined (except information regarding mineral or elemental contents of such coal, which are potentially toxic in the environment) shall be kept confidential and not made a matter of public record; and]

(c) **Confidential information is limited to:**

(1) **information that pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of such coal which are potentially toxic in the environment;**

(2) **information required under §134.041 of the Act that is not on public file and that the applicant has requested in writing to be held confidential; and**

(3) **information on the nature and location of archeological resources on public land and Indian land shall be kept confidential as required under the Archeological Resources Protection Act of 1979 (Pub. L. 96-95, 93 Stat. 721, 16 U.S.C. 470).**

(d) [(b)] The Commission shall maintain information required to be kept confidential under subsection (c) [(a)] of this section separately from other portions of the permit application. This information shall be clearly identified by applicant and submitted separately from other portions of the application.

(e) [(c)] The Commission shall provide reasonable notice and an opportunity to be heard for persons seeking or opposing disclosure of information under this section.

§12.215. Review of Permit Applications.

(a)-(e) (No change.)

(f) Before any final determination by the Commission that the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of the Act **or Federal Act and its implementing Federal Regulations and all federal and state programs approved under the Federal Act or federal or state laws as used in 30 CFR 773.15(b)** of such nature, duration, and with such resulting irreparable damage to the environment that indicates an intent not to comply with the provisions of the Act **or Federal Act and its implementing Federal Regulations and all federal and state programs approved under the Federal Act or federal or state laws as used in 30**

CFR 773.15(b), no permit shall be issued **and a hearing shall be held.** [before a hearing and a final determination that no pattern of willful violations exists.] The applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in the regulatory program. Such hearing shall be conducted pursuant to §12.222 of this title (relating to Administrative Review). **The Commission shall deny an application after a determination has been made that a pattern of willful violations exists.**

(g) (No change.)

§12.216. Criteria For Permit Approval or Denial.

No permit or revision application shall be approved, unless the application affirmatively demonstrates and the Commission finds, in writing, on the basis of information set forth in the application or from information otherwise available, which is documented in the approval and made available to the applicant, that:

(1)-(2) (No change.)

(3) the assessment of the probable cumulative impacts of all anticipated coal mining in the **cumulative impact** [general] area on the hydrologic balance has been made by the Commission, and the operations proposed under the application have been designed to prevent damage to the hydrologic balance outside the proposed **permit** [mine plan] area;

(4) the proposed permit area is:

(A)-(D) (No change.)

(E) not within 300 feet from any occupied dwelling, except as provided for in **§12.71(5)** [§12.71(3)] of this title (relating to Areas Where Mining is Prohibited or Limited) and **§12.72(f)** [§12.72(d)] of this title (relating to Procedures);

(5) the proposed operations will not adversely affect any **properties listed on and** [publicly-owned parks or places included or] eligible for listing **on** [in] the National Register of Historic Places, except as provided for in §12.71(3) of this title (relating to Areas Where Mining is Prohibited **or** [of] Limited). This finding may be supported in part by inclusion of appropriate permit conditions, revisions in the operation plan, or a documented decision by the **Commission** [appropriate authorities] that no additional protection measures are required under the National Historic Preservation Act;

(6)-(8) (No change.)

[(9)] the applicant or the operator, if other than the applicant, does not control and has not controlled mining operations with a demonstrated pattern of willful violations of the Act of such nature, duration, and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of the Act;]

(9) [(10)] surface coal mining and reclamation operations to be performed under the permit will not be inconsistent with other such operations anticipated to be performed in areas adjacent to the proposed permit area;

(10) [(11)] the applicant will submit the performance bond or other equivalent guarantee required under Subchapter J of this chapter (relating to Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations), prior to the issuance of the permit;

(11) [(12)] the applicant has, with respect to both prime farmland and alluvial valley floors obtained either a negative determination or satisfied the requirements of §§12.201 and 12.202 of this title (relating to Prime Farmland, and to Surface Coal Mining and Reclamation Operations On Areas or Adjacent to Areas Including Alluvial Valley Floors In The Arid or Semiarid Areas West of The 100th Meridian);

(12) [(13)] the proposed postmining land use of the permit area has been approved by the Commission in accordance with the requirements of §12.399 or §12.568 of this title (relating to Postmining Land Use);

(13) [(14)] the Commission has made all specific approvals required under Subchapter K of this chapter (relating to Permanent Program Performance Standards);

(14) [(15)] the Commission has found that the activities would not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

(15) [(16)] the applicant has, where applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use, in accordance with the requirements of §12.390 or §12.555 of this title (relating to Revegetation: General Requirements).

§12.220. Conditions of Permits: General and Right of Entry.

(a)-(c) (No change.)

(d) The **operator** [permittee] shall pay all reclamation fees required by Subchapter R of this chapter (relating to Texas Abandoned Mine Land Reclamation Program) **and by 30 CFR Subchapter R** for coal produced under the permit for sale, transfer or use.

§12.221. Conditions of Permits: Environment, Public Health, and Safety.

(a)-(b) (No change.)

(c) The permittee shall conduct its operations:

(1) (No change.)

(2) utilizing any methods specified in the permit by the Commission in approving alternative methods of compliance with the performance standards of the Act and these Regulations, in accordance with the provisions of the Act, of **§12.216(12)** [§12.216(13)] of this title (relating to Criteria for Permit Approval or Denial) and Subchapter K of this chapter (relating to Permanent Program Performance Standards).

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Mary Ross McDonald

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Permit Reviews, Revisions, and Renewals, and
Transfer, Sale, and Assignment of Rights Granted
Under Permits

16 TAC §12.225, §12.227

The amendments are proposed under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the proposed new sections and amendments:

§12.225. Commission Review of Outstanding Permits.

(a)-(e) (No change.)

(f) Remedial measures. If the Commission, under subsection (e) of this section, finds that, because of an unabated violation or a delinquent penalty or fee a permit was improvidently issued, it shall use one or more of the following remedial measures:

(1) (No change.)

(2) require revision of the permit to impose a condition that in a reasonable period of time the permittee abate the violation or pay the penalty or fee; [and]

(3) **suspend the permit until the violation is abated or the penalty fee is paid; or** [issue a show cause order to suspend or revoke the permit based upon its improvident issuance in accordance with the APA. A decision on suspension shall be made within ninety days and a decision on rescission shall be made within a further ninety days.]

(4) **rescind the permit under subsection (g) of this section.**

(g) **Automatic suspension and rescission. If the Commission elects to rescind an improvidently issued permit, it shall serve on the permittee a notice of the proposed suspension and rescission which includes the reasons for the findings of the Commission under subsection (e) of this section and states that:**

(1) after a specified period of time not to exceed 90 days, the permit will automatically become suspended, and not to exceed 90 days thereafter rescinded, unless within those periods the permittee submits proof, and the Commission finds, consistent with the provisions of 30 CFR 773.25, that:

(A) the finding of the Commission under subsection (e) of this section was erroneous;

(B) the permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency;

(C) the violation, penalty, or fee is the subject of a good-faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; or

(D) since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty, or fee.

(2) after permit suspension or rescission, the permittee shall cease all surface coal mining and reclamation operations under the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the Commission.

(h) [(g)] Right to appeal. The permittee may file an appeal for review under §§134.161-134.173 of the Act and §§2001.141-2001.147 of the APA (relating to Contested Cases: Final Decisions and Orders; Motions for Rehearing).

§12.227. *Permit Renewals: General Requirements.*

(a) (No change.)

(b) Permit renewal shall not be available for conducting surface coal mining and reclamation operations on lands beyond the boundaries of the permit area approved under the existing permit. Approval of permits to conduct operations on these lands, including, but not limited to, any remainder of the **general** [mine plan] area described in the application for the existing permit, shall be obtained in accordance with §12.228(b)(2) of this title (relating to Permit Renewals: Completed Applications).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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For further information, please call: (512) 463-7008



Subchapter J. Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations

General Requirements for Insurance and Bonding of Surface Coal Mining and Reclamation Operations Under Regulatory Programs

16 TAC §12.301

The amendment is proposed under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the proposed new sections and amendments:

§12.301. *Requirements to File a Bond.*

(a) (No change.)

(b) The bond or bonds shall cover the entire permit area, or an identified increment of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations during the initial term of the permit. As operations on succeeding areas are initiated and conducted, the permittee shall file with the Commission an additional bond or bonds to cover such areas in accordance with this Section. The bond or bonds shall not

be for an area that is smaller than the entire area upon which surface coal mining and reclamation operations will be conducted in a given permit term.

(1) (No change.)

(2) When the operator elects to "increment" the amount of the performance bond during the term of the permit, he shall identify the initial and successive incremental areas for bonding on the permit application map submitted for approval as provided in §12.142 of this title (relating to Operation Plan: Maps and Plans), and shall specify the proportion of the total bond amount required for the term of the permit which will be filed prior to commencing operations on each incremental area. **Independent increments shall be of sufficient size and configuration to provide for efficient reclamation operations should reclamation by the Commission become necessary pursuant to §§12.314-12.317 of this title (relating to Performance Bond Forfeitures Criteria and Procedures).** The scheduled amount of each performance bond increment shall be filed with the Commission at least 30 days prior to the commencement of surface coal mining and reclamation operations in the next incremental area.

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Subchapter K. Permanent Program Performance Standards

Permanent Program Performance Standards - Coal Exploration

16 TAC §12.327 §12.328

The amendments are proposed under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the proposed new sections and amendments:

§12.327. *Performance Standards For Coal Exploration.*

(a) Habitats of unique or unusually high value for fish, wildlife, and other related environmental values and critical habitats of threatened or endangered species identified pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) [and areas identified in §12.144(b) of this title (relating to Fish and Wildlife Plan)] shall not be disturbed during coal exploration.

(b) - (k) (No change.)

§12.328. *Requirement for a Permit.*

(a) Any person who extracts coal for commercial use or sale during coal exploration operations must first obtain a permit to conduct surface coal mining operations for those operations from the Commission under Subchapter G of this chapter (relating to Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Procedures Systems). [No permit is required if the Commission makes a prior determination that the sale is to test for coal properties necessary for the development of surface coal mining and reclamation operations for which a permit application is to be submitted at a later time.]

(b) With the prior written approval of the Commission, no permit to conduct surface coal mining operations is required for the sale or commercial use of coal extracted during exploration operations if such sale or commercial use is for coal testing purposes only. The person conducting the exploration shall file an application for such approval with the Commission. The application shall demonstrate that the coal testing is necessary for the development of a surface coal mining and reclamation operation for which a surface coal mining operations permit application is to be submitted in the near future, and that the proposed commercial use or sale of coal extracted during exploration operations is solely for the purpose of testing the coal. The application shall contain the following:

(1) the name of the testing firm and the locations at which the coal will be tested.

(2) if the coal will be sold directly to, or commercially used directly by, the intended end user, a statement from the intended end user, or if the coal is sold indirectly to the intended end user through an agent or broker, a statement from the agent or broker. The statement shall include:

(A) the specific reason for the test, including why the coal may be so different from the intended user's other coal supplies as to require testing;

(B) the amount of coal necessary for the test and why a lesser amount is not sufficient; and

(C) a description of the specific tests that will be conducted.

(3) evidence that sufficient reserves of coal are available to the person conducting exploration or its principals for future commercial use or sale to the intended end user, or agent or broker of such user identified above, to demonstrate that the amount of coal to be removed is not the total reserve, but is a sampling of a larger reserve.

(4) an explanation as to why other means of exploration, such as core drilling, are not adequate to determine the quality of the coal and/or the feasibility of developing a surface coal mining operation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Permanent Program Performance Standards - Surface Mining Activities

16 TAC §§12.331, 12.340, 12.341, 12.344, 12.347-12.350, 12.352, 12.355, 12.357, 12.358, 12.360, 12.362-12.364, 12.366, 12.370, 12.375-12.378, 12.380, 12.385, 12.387, 12.388, 12.390, 12.395, 12.400, 12.401

The new sections and amendments are proposed under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the proposed new sections and amendments:

§12.331. Casing and Sealing of Drilled Holes: General Requirements.

Each exploration hole, other drill hole or borehole, well, or other exposed underground opening shall be cased, sealed, or otherwise managed, as approved by the Commission, to prevent acid or other toxic drainage from entering ground or surface waters, to minimize disturbance to the prevailing hydrologic balance, and to ensure the safety of people, livestock, fish and wildlife, and machinery in the permit area [mine plan] and adjacent area. If these openings are uncovered or exposed by surface mining activities within the permit area they shall be permanently closed, unless approved for water monitoring, or otherwise managed in a manner approved by the Commission. Use of a drilled hole or borehole or monitoring well as a water well must meet the provisions of §12.351 of this title (relating to Hydrologic Balance: Transfer of Wells). This section does not apply to holes solely drilled and used for blasting.

§12.340. Hydrologic Balance: Water-Quality Standards and Effluent Limitations.

Discharge of water from areas disturbed by surface mining activities shall be made in compliance with all applicable state and federal water-quality laws and regulations and with the effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency set forth in 40 CFR 434.

§12.341. Hydrologic Balance: Diversions.

(a) General Requirements.

(1) With the approval of the Commission, any flow from mined areas abandoned before May 3, 1978, and any flow from undisturbed areas or reclaimed areas, after meeting the criteria of §12.344 (relating to Hydrologic Balance: Sedimentation Ponds) for siltation structures removal, may be diverted from disturbed areas by means of temporary or permanent diversions. All diversions shall be designed to minimize adverse impacts to the hydrologic balance within the permit and adjacent areas, to prevent material damage outside the permit area and to assure the safety of the public. Diversions shall not be used to divert water into underground mines without approval of the Commission under §12.353 (relating to Hydrologic Balance: Discharge of Water Into an Underground Mine).

(2) The diversion and its appurtenant structures shall be designed, located, constructed, maintained and used to:

- (A) be stable;
- (B) provide protection against flooding and resultant damage to life and property;
- (C) prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow outside the permit area; and
- (D) comply with all applicable local, state, and federal laws and regulations.

(3) Temporary diversions shall be removed when no longer needed to achieve the purpose for which they were authorized. The land disturbed by the removal process shall be restored in accordance with §§12.330-12.340, this section, and §§12.342-12.403 (relating to Permanent Program Performance Standards - Surface Mining Activities). Before diversions are removed, downstream water-treatment facilities previously protected by the diversion shall be modified or removed, as necessary, to prevent overtopping or failure of the facilities. This requirement shall not relieve the operator from maintaining water-treatment facilities as otherwise required. A permanent diversion or a stream channel reclaimed after the removal of a temporary diversion shall be designed and constructed so as to restore or approximate the premining characteristics of the original stream channel including the natural riparian vegetation to promote the recovery and the enhancement of aquatic habitat.

(4) Diversion designs shall incorporate the following:

(A) be constructed with gentle sloping banks that are stabilized by vegetation. Asphalt, concrete or other similar linings shall be used only when approved by the Commission to prevent seepage or to provide stability. Channel linings shall be designed using standard engineering practices to pass safely the design velocities and shall be approved for permanent diversions only where they are stable and will require infrequent maintenance;

(B) erosion protection shall be provided for transition of flows and for critical areas such as swales and curves;

(C) energy dissipators shall be installed when necessary at discharge points, where diversions intersect with natural streams and exit velocities of the diversion ditch flow is greater than that of the receiving stream;

(D) excess excavated material not necessary for diversion channel geometry or regrading of the channel shall be disposed of in accordance with §§12.363-12.366 of this title (relating to Disposal of Excess Spoil: General Requirements, to Disposal of Excess Spoil: Valley Fills, to Disposal of Excess Spoil: Head-of-Hollow Fills, and to Disposal of Excess Spoil: Durable Rock Fills); and

(E) topsoil shall be handled in compliance with §§12.334-12.338 of this title (relating to Topsoil: General Requirements, to Topsoil: Removal, to Topsoil: Storage, to Topsoil: Redistribution, and to Topsoil: Nutrients and Soil Amendments).

(b) Diversions of Perennial and Intermittent Streams.

(1) Diversions of perennial and intermittent streams within the permit area may be approved by the Commission after making the finding relating to stream buffer zones that the diversion will not adversely affect the water quantity and quality and related environmental resources of the stream.

(2) The design capacity of channels for temporary and permanent stream channel diversions shall be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream from the diversion.

(3) The requirements of subsection (a)(2)(B) of this section shall be met when the temporary and permanent diversions for perennial and intermittent streams are designed so that the combination of channel, bank and floodplain configuration is adequate to pass safely the peak runoff of a 10-year, 6-hour precipitation event for a temporary diversion and a 100-year, 6-hour precipitation event for a permanent diversion.

(4) The design and construction of all stream channel diversions of perennial and intermittent streams shall be certified by a qualified registered professional engineer as meeting the performance standards of this part and any design criteria set by the Commission.

(c) Diversion of Miscellaneous Flows.

(1) Miscellaneous flows, which consists of all flows except for perennial and intermittent streams, may be diverted away from disturbed areas if required or approved by the Commission. Miscellaneous flows shall include ground-water discharges and ephemeral streams.

(2) The design, location, construction, maintenance, and removal of diversions of miscellaneous flows shall meet all of the performance standards set forth in subsection (a) of this section.

(3) The requirements of subsection (a)(2)(B) of this section shall be met when the temporary and permanent diversions for miscellaneous flows are designed so that the combination of channel, bank and flood-plain configuration is adequate to pass safely the peak runoff of a 2-year, 6-hour precipitation event for a temporary diversion and a 10-year, 6-hour precipitation event for a permanent diversion.

§12.344. Hydrologic Balance: Siltation Structures.

(a) Scope. For the purposes of this section only, disturbed areas shall not include those areas:

(1) in which the only surface mining activities include diversion ditches, siltation structures, or roads that are designed, constructed and maintained in accordance with §§12.330-12.343, this section, and §§12.345-12.403 of this title (relating to Permanent Program Performance Standards - Surface Mining Activities); and

(2) for which the upstream area is not otherwise disturbed by the operator.

(b) General requirements.

(1) Additional contributions of suspended solids sediment to streamflow or runoff outside the permit area shall be prevented to the extent possible using the best technology currently available.

(2) All surface drainage from the disturbed area shall be passed through a siltation structure before leaving the permit area, except as provided in paragraph (5) of this subsection or subsection (e) of this section.

(3) Siltation structures for an area shall be constructed before beginning any surface mining activities in that area, and upon construction shall be certified by a qualified registered professional engineer to be constructed as designed and as approved in the reclamation plan.

(4) Any siltation structure which impounds water shall be designed, constructed and maintained in accordance with §12.347 of this title (relating to Hydrologic Balance: Permanent and Temporary Impoundments).

(5) Siltation structures shall be maintained until the disturbed area has been stabilized and revegetated and removal is authorized by the Commission. In no case shall the structure be removed sooner than 2 years after the last augmented seeding.

(6) When a siltation structure is removed, the land on which the siltation structure was located shall be regraded and revegetated in accordance with the reclamation plan and §§12.390-12.395 of this title (relating to Revegetation: General Requirements, to Revegetation: Use of Introduced Species, to Revegetation: Timing, to Revegetation: Mulching and Other Soil Stabilizing Practices, and to Revegetation: Standards for Success). Sedimentation ponds approved by the Commission for retention as permanent impoundments may be exempted from this requirement.

(c) Sedimentation ponds.

(1) When used, sedimentation ponds shall:

(A) be used individually or in series;

(B) be located as near as possible to the disturbed area and out of perennial streams unless approved by the Commission; and

(C) be designed, constructed, and maintained to:

(i) provide adequate sediment storage volume. The minimum sediment storage volume shall be equal to the three year accumulated sediment volume from the drainage area to the pond. The sediment volume shall be determined using the Universal Soil Loss Equation, gully erosion rates, and the sediment delivery ratio converted to sediment volume, using either the sediment density or other empirical methods approved by the Commission;

(ii) provide adequate detention time to allow the effluent from the ponds to meet state and federal effluent limitations. The minimum detention time without a chemical treatment process shall be 10 hours;

(iii) contain or treat the 10-year, 24-hour precipitation event ("design event") unless a lesser design event is approved by the Commission based on terrain, climate, other site-specific conditions and on a demonstration by the operator that the effluent limitations of §12.340 of this title (relating to Hydrologic Balance: Water-Quality Standards and Effluent Limitations) will be met;

(iv) provide a nonclogging dewatering device adequate to maintain the detention time required under clause (ii) of this subparagraph;

(v) minimize, to the extent possible, short circuiting;

(vi) provide periodic sediment removal sufficient to maintain adequate volume for the design event;

(vii) ensure against excessive settlement;

(viii) be free of sod, large roots, frozen soil, and acid- or toxic-forming coal-processing waste; and

(ix) be compacted properly.

(2) A sedimentation pond shall include either a combination of principal and emergency spillways or single spillway configured as specified in §12.347(a)(9) of this title (relating to Hydrologic Balance: Permanent and Temporary Impoundments).

(d) Other treatment facilities.

(1) Other treatment facilities shall be designed to treat the 10-year, 24-hour precipitation event unless a lesser design event is approved by the Commission based on terrain, climate, other site-specific conditions and a demonstration by the operator that the effluent limitations of §12.340 of this title (relating to Hydrologic Balance: Water-Quality Standards and Effluent Limitations) will be met.

(2) Other treatment facilities shall be designed in accordance with the applicable requirements of subsection (c) of this section.

(e) Exemptions. Exemptions to the requirements of this section may be granted if:

(1) the disturbed drainage area within the total disturbed area is small; and

(2) the operator demonstrates that siltation structures and alternate sediment control measures are not necessary for drainage from the disturbed area to meet the effluent limitations under §12.340 of this title (relating to Hydrologic Balance: Water-Quality Standards and Effluent Limitations) and the applicable state and federal water-quality standards for the receiving waters.

§12.347. Hydrologic Balance: Permanent and Temporary Impoundments.

(a) General Requirements. The requirements of this subsection apply to both temporary and permanent impoundments.

(1) Impoundments meeting the Class B or C criteria of dams in the U.S. Department of Agriculture, Natural Resources Conservation Service Technical Release No. 60 (210-VI-TR60, Oct. 1985), *Earth Dams and Reservoirs*, shall comply with the *Minimum Emergency Spillway Hydrologic Criteria* table in TR-60 and the requirements of this section. Technical Release No. 60 is hereby incorporated by reference. Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, Order No. PB 87-157509/AS. Copies can be inspected at the Commission's Surface Mining and Reclamation Division Office at 1701 N. Congress Avenue, Austin, Texas.

(2) An impoundment meeting the size or other criteria of 30 CFR 77.216(a) shall comply with the requirements of 30 CFR 77.216 and of this section.

(3) The design of impoundments shall be certified in accordance with §12.148(a) of this title (relating to Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments) as designed to meet the requirements of this part using current, prudent, engineering practices and any design criteria established by the Commission. The qualified, registered professional engineer shall be experienced in the design and construction of impoundments.

(4) Stability.

(A) An impoundment meeting the Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a), shall have a minimum static factor of 1.5 for a normal

pool with steady-state seepage saturation conditions, and a seismic safety factor of at least 1.2.

(B) An impoundment not included in subparagraph (A) of this paragraph, except for a coal-mine waste impounding structure, shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions or meet the requirements of §12.148(c) of this title (relating to Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments).

(5) Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. Impoundments meeting the Class B or C criteria for dams in TR-60 shall comply with the freeboard hydrograph criteria in the *Minimum Emergency Spillway Hydrologic Criteria* table in TR-60.

(6) Foundations.

(A) Foundations and abutments for an impounding structure shall be stable during all phases of construction and operation and shall be designed based on adequate and accurate information on the foundation conditions. For an impoundment meeting the Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a), foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability.

(B) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

(7) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

(8) Faces of embankments and surrounding areas shall be vegetated, except that faces where water is impounded may be riprapped or otherwise stabilized in accordance with accepted design practices.

(9) An impoundment shall include either a combination of principal and emergency spillways or a single spillway configured as specified in subparagraph (A) of this paragraph, designed and constructed to safely pass the applicable design precipitation event specified in subparagraph (B) of this paragraph.

(A) The Commission may approve a single open-channel spillway that is of nonerodible construction and designed to carry sustained flows or earth- or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

(B) Except as specified in subsection (c)(2) of this section, the required design precipitation event for an impoundment meeting the spillway requirements of this paragraph is:

(i) for an impoundment meeting the Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the *Minimum Emergency Spillway Hydrologic Criteria* table in TR-60, or greater event as specified by the Commission;

(ii) for an impoundment meeting or exceeding the size or other criteria of 30 CFR 77.216(a), a 100-year, 6-hour event, or greater event as specified by the Commission; and

(iii) for an impoundment not included in clauses (i) and (ii) of this subparagraph, a 25-year, 6-hour event, or greater event as specified by the Commission.

(10) The vertical portion of any remaining highwall shall be located far enough below the low-water line along the full extent of the highwall to provide adequate safety and access for the proposed water users.

(11) A qualified registered professional engineer or other qualified professional specialist under the direction of a professional engineer, shall inspect each impoundment as provided in subparagraph (A) of this paragraph. The professional engineer or specialist shall be experienced in the construction of impoundments.

(A) Inspections shall be made regularly during construction, upon completion of the construction, and at least yearly until removal of the structure or release of the performance bond.

(B) The qualified registered professional engineer shall promptly after each inspection required in subparagraph (A) of this paragraph, provide the Commission a certified report that the impoundment has been constructed and/or maintained as designed and in accordance with the approved plan and this chapter. The report shall include discussion of any appearance of instability, structural weakness or other hazard condition, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability.

(C) A copy of the report shall be retained at or near the minesite.

(12) Impoundments meeting the NRCS Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216 must be examined in accordance with 30 CFR 77.216-3. Impoundments not meeting the NRCS Class B or C criteria for dams in TR-60, or subject to 30 CFR 77.216, shall be examined at least quarterly. A qualified person designated by the operator shall examine impoundments for the appearance of structural weakness and other hazardous conditions.

(13) If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the Commission of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the Commission shall be notified immediately. The Commission shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(b) Permanent Impoundments. A permanent impoundment of water may be created, if authorized by the Commission in the approved permit based upon the following demonstration:

(1) the size and configuration of such impoundment will be adequate for its intended purposes;

(2) the quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable state and federal water-quality standards, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable state and federal water-quality standards;

(3) the water level will be sufficiently stable and be capable of supporting the intended use;

(4) final grading will provide for adequate safety and access for proposed users;

(5) the impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses; and

(6) the impoundment will be suitable for the approved postmining land use.

(c) Temporary Impoundments.

(1) The Commission may authorize the construction of temporary impoundments as part of a surface coal mining operation.

(2) In lieu of meeting the requirements of subsection (a)(9)(A) of this section, the Commission may approve an impoundment that relies primarily on storage to control the runoff from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer that the impoundment will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent engineering practices. Such an impoundment shall be located where failure would not be expected to cause loss of life or serious property damage, except where:

(A) impoundments meeting the NRCS Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a), shall be designed to control the precipitation of the probable maximum precipitation of a 6-hour event, or greater event as specified by the Commission; and

(B) impoundments not included in subparagraph (A) of this paragraph shall be designed to control the precipitation of the 100-year, 6-hour event, or greater event as specified by the Commission.

§12.348. Hydrologic Balance: Ground-Water Protection.

In order to protect the hydrologic balance, surface mining activities shall be conducted according to the plan approved under §12.146 of this title (relating to Reclamation Plan: Protection of Hydrologic Balance) and the following:

(1) ground-water quality shall be protected by handling earth materials and runoff in a manner that minimizes acidic, toxic, or other harmful infiltration to ground-water systems and by managing excavations and other disturbances to prevent or control the discharge of pollutants into the ground water; and

(2) ground-water quantity shall be protected by handling earth materials and runoff in a manner that will restore the approximate premining recharge capacity of the reclaimed area as a whole, excluding coal mine waste disposal areas and fills, so as to allow the movement of water to the ground-water system.

§12.349. Hydrologic Balance: Surface-Water Protection.

In order to protect the hydrologic balance, surface mining activities shall be conducted according to the plan approved under §12.146 of this title (relating to Reclamation Plan: Protection of Hydrologic Balance) and the following:

(1) surface-water quality shall be protected by handling earth materials, ground-water discharges, and runoff in a manner that

minimizes the formation of acidic or toxic drainage; prevents, to the extent possible using the best technology currently available, additional contribution of suspended solids to streamflow outside the permit area; and otherwise prevents water pollution. If drainage control, restabilization and revegetation of disturbed areas, diversion of runoff, mulching, or other reclamation and remedial practices are not adequate to meet the requirements of §12.340 (relating to Hydrologic Balance: Water-Quality Standards and Effluent Limitations), the operator shall use and maintain the necessary water-treatment facilities or water controls; and

(2) surface-water quality and flow rates shall be protected by handling earth materials and runoff in accordance with the steps outlined in the plan approved under §12.146 of this title (relating to Reclamation Plan: Protection of Hydrologic Balance).

§12.350. Hydrologic Balance: Surface and Ground-Water Monitoring.

(a) Ground water.

(1) Ground-water monitoring shall be conducted according to the ground-water monitoring plan approved under §12.146(b) of this title (relating to Reclamation Plan: Protection of Hydrologic Balance). The Commission may require additional monitoring when necessary.

(2) Ground-water monitoring data shall be submitted every 3 months to the Commission or more frequently as prescribed by the Commission. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any ground-water sample indicates noncompliance with the permit conditions, then the operator shall promptly notify the Commission and immediately take the action provided for in §§12.221(a) and 12.146(a) of this title (relating to Conditions of Permits: Environment, Public Health, and Safety, and to Reclamation Plan: Protection of Hydrologic Balance).

(3) Ground-water monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with the procedures of §§12.206-12.221 of this title (relating to Review, Public Participation, and Approval of Permit Applications and Permit Terms and Conditions), the Commission may modify the monitoring requirements, including the parameters covered and the sampling frequency, if the operator demonstrates, using the monitoring data obtained under this section, that:

(A) the operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; and the water rights of other users have been protected or replaced; or

(B) monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under §12.146(b) of this title (relating to Reclamation Plan: Protection of Hydrologic Balance).

(4) Equipment, structures, and other devices used in conjunction with monitoring the quality and quantity of ground water onsite and offsite shall be properly installed, maintained, and operated and shall be removed when no longer needed.

(b) Surface water.

(1) Surface-water monitoring shall be conducted according to the surface water monitoring plan approved under §12.146(c) of this title (relating to Reclamation Plan: Protection of Hydrologic Balance). The Commission may require additional monitoring when necessary.

(2) Surface-water monitoring data shall be submitted every three months to the Commission or more frequently as prescribed by the Commission. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any surface water sample indicates noncompliance with the permit conditions, then the operator shall promptly notify the Commission and immediately take the action provided for in §§12.221(a) and 12.146(a) of this title (relating to Conditions of Permits: Environment, Public Health, and Safety, and to Reclamation Plan: Protection of Hydrologic Balance). The reporting requirements of this paragraph do not exempt the operator from meeting any National Pollutant Discharge Elimination System (NPDES) requirements.

(3) Surface-water monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with the procedures of §§12.206-12.221 of this title (relating to Review, Public Participation, and Approval of Permit Applications and Permit Terms and Conditions), the Commission may modify the monitoring requirements, except those required by the NPDES permitting authority, including the parameters covered and the sampling frequency, if the operator demonstrates, using the monitoring data obtained under this section, that:

(A) the operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; and the water rights of other users have been protected or replaced; or

(B) monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under §12.146(c) of this title (relating to Reclamation Plan: Protection of Hydrologic Balance).

(4) Equipment, structures, and other devices used in conjunction with monitoring the quality and quantity of surface water onsite and offsite shall be properly installed, maintained, and operated and shall be removed when no longer needed.

§12.352. Hydrologic Balance: Water Rights and Replacement.

Any person who conducts surface mining activities shall replace the water supply of an owner of interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source, where the water supply has been **adversely impacted** [affected] by contamination, diminution, or interruption proximately resulting from the surface mining activities. **Baseline hydrologic information required in §§12.126, 12.130, and 12.146 of this title (relating to Description of Hydrology and Geology: General Requirements, to Alternative Water Supply Information, and to Reclamation Plan: Protection of Hydrologic Balance) shall be used to determine the extent of the impact of mining upon ground water and surface water.**

§12.355. Hydrologic Balance: Stream Buffer Zones.

(a) No land within 100 feet of a perennial stream or an intermittent stream shall be disturbed by surface mining activities, unless the Commission specifically authorizes surface mining activities closer to, or through, such a stream. The Commission may authorize such activities only upon finding that:

(1) surface mining activities will not cause or contribute to the violation of applicable state or federal water-quality standards, and will not adversely affect the water quantity and quality or other environmental resources of the stream; and

(2) if there will be a temporary or permanent stream-channel diversion, it will comply with §12.341 of this title (relating to Hydrologic Balance: Diversions).

(b) The area not to be disturbed shall be designated as a buffer zone, and the operator shall mark it as specified in §12.330 of this title (relating to Signs and Markers).

§12.357. Use of Explosives: General Requirements.

(a) Each operator shall comply with all applicable state and federal laws **and regulations** in the use of explosives.

(b) (No change.)

(c) All blasting operations shall be conducted by experienced, trained, and competent persons who understand the hazards involved. **A blaster and at least one other person shall be present at the firing of a blast.** Each person responsible for blasting operations shall possess a valid certification as required by §§12.700-12.710 of this title (relating to Training, Examination, and Certification of Blasters) and:

(1)-(2) (No change.)

(d) Blast-design requirements shall include the following:

(1) the operator shall submit to the Commission an anticipated blast design if blasting operations will be conducted within:

(A) 1,000 feet of any building used as a dwelling, public building, school, church, **hospital, nursing facility,** or community or institutional building outside the permit area; [or]

(B) 500 feet of **facilities including, but not limited to, disposal wells, petroleum or gas storage facilities,** [an] active or abandoned underground **mines, fluid-transmission pipelines, gas or oil-collection lines, or water and sewage lines** [mine];

(2)-(5) (No change.)

§12.358. Use of Explosives: Pre-Blasting Survey.

(a) At least 30 days before initiation of a blasting program, the operator shall notify, in writing, all residents or owners of dwellings or other structures located within 1/2 mile of **any part of the permit area** [blasting site] regarding how to request a preblasting survey. The request shall be made, in writing, directly to the operator or to the Commission who shall promptly notify the operator. The operator shall promptly conduct a pre-blasting survey of the dwelling or structure and promptly submit a report of the survey to the Commission and to the person requesting the survey. If a structure is renovated or modified subsequent to a pre-blast survey, then upon request a survey of such additions and renovations shall be performed by the operator in accordance with this section.

(b) The operator shall determine the condition of the dwelling or structure and shall document any pre-blasting damage and other

physical factors that could reasonably be affected by the blasting. Assessments of structures such as pipelines, pipes, cables, transmission lines, cisterns, [and] wells, and other water systems **warrant special attention; however, assessment of these structures** may be limited to surface conditions and other readily available data. Special attention shall be given to the pre-blasting condition of wells and other water systems used for human, animal, or agricultural purposes and to the quantity and quality of the water.

(c)-(d) (No change.)

§12.360. Use of Explosives: Control of Adverse Effects.

(a) General requirements.

(1) Blasting shall be conducted in a manner that will prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of ground or surface waters outside the permit area.

(2) Except where lesser distances are approved by the Commission, based upon a pre-blasting survey, seismic investigation, **and an approved blast design submitted in accordance with the requirements of §12.357(d) of this title (relating to Use of Explosives: General Requirements)** [or other appropriate investigation], blasting shall not be conducted within:

(A) 1,000 feet of any building used as a dwelling, **public building**, school, church, hospital, [or] nursing facility, **or community or institutional building outside the permit area; or** [; and]

(B) 500 feet of facilities including, but not limited to, disposal wells, petroleum or gas storage facilities, **active and abandoned underground mines**, fluid-transmission pipelines, gas or oil-collection lines, or water and sewage lines.

(b)-(g) (No change.)

(h) Ground vibration.

(1)General. In all blasting operations, except as otherwise authorized in subsection (i) [(e)] of this section, the maximum ground vibration shall not exceed the values approved in the blasting plan required under §12.141 of this title (relating to Operation Plan: Blasting). The maximum ground vibration for protected structures listed in **paragraph (2)(A) of this subsection** [subsection (d)(2)(A) of this section] shall be established in accordance with the maximum peak-particle-velocity limits of **paragraph (2) of this subsection** [subsection (d)(2) of this paragraph], the scaled-distance equation of **paragraph (3) of this subsection** [subsection (d)(3) of this paragraph], the blasting-level chart of **paragraph (4) of this subsection** [subsection (d)(4) of this paragraph], or by the Commission under **paragraph (5) of this subsection** [subsection (d)(5) of this paragraph]. All structures in the vicinity of the blasting area, not listed in **paragraph (2)(A) of this subsection** [subsection (d)(2)(A) of this section], such as water towers, pipelines and other utilities, tunnels, dams, impoundments, and underground mines, shall be protected from damage by establishment of a maximum allowable limit on the ground vibration, submitted by the operator in the blasting plan and approved by the Commission.

(2) Maximum peak particle velocity.

(A) The maximum ground vibration shall not exceed the following limits at the location of any dwelling, public building,

school, church, or community or institutional building outside the permit area:

Figure: 16 TAC 12.360(h)(2)(A)

(B) (No change.)

(3) Scaled-distance equation.

(A) An operator may use the scaled-distance equation, $W = (D/D_s)^2$, to determine the allowable charge weight of explosives to be detonated in any 8-millisecond period, without seismic monitoring; where W = the maximum weight of explosives, in pounds; D = the distance, in feet, from the blasting site to the nearest protected structure; and D_s = the scaled-distance factor, which may initially be approved by the Commission using the values for the scaled-distance factor listed in **paragraph (2)(A) of this subsection** [subsection (d)(2)(A) of this section].

(B) The development of a modified scaled-distance factor may be authorized by the Commission on receipt of a written request by the operator, supported by seismographic records of blasting at the mine site. The modified scaled-distance factor shall be determined such that the particle velocity of the predicted ground vibration will not exceed the prescribed maximum allowable peak particle velocity of **paragraph (2)(A) of this subsection** [subsection (d)(2)(A) of this section], at a 95-percent confidence level.

(4)-(6) (No change.)

(i) (No change.)

§12.362. Use of Explosives: Records of Blasting Operations.

The operator shall retain a record of each blast, including seismograph reports, which shall be retained for at least 3 years and which shall be available for inspection by the Commission and the public on request. The record shall contain the following data:

(1)-(3) (No change.)

(4) identification, direction, and distance, in feet, from to the nearest blast hole to the nearest dwelling, public building, school, church, community or institutional building located outside the permit area, except those described in **§12.360(i)** [§12.360(e)] of this title (relating to Use of Explosives: Control of Adverse Effects);

(5)-(20) (No change.)

§12.363. Disposal of Excess Spoil: General Requirements.

(a)-(c) (No change.)

(d) Slope protection shall be provided to minimize surface erosion at the site. Diversion design shall conform with the requirements of §12.341 of this title (relating to Hydrologic Balance: Diversions [and Conveyance of Overland Flow and Shallow Ground-Water Flow, and Ephemeral Streams]). All disturbed areas, including diversion ditches that are not rippedraped, shall be vegetated upon completion of construction.

(e)-(q) (No change.)

§12.364. Disposal of Excess Spoil: Valley Fills.

(a)-(b) (No change.)

(c) A subdrainage system for the fill shall be constructed in accordance with the following:

(1) a system of underdrains constructed of durable rock shall meet the requirements of **paragraph (4) of this subsection** [subsection (c)(4) of this section] and:

(A)-(C) (No change.)

(2) (No change.)

(3) in constructing the underdrains, no more than 10% of the rock may be less than 12 inches in size, and no single rock may be larger than 25% of the width of the drain. Rock used in underdrains shall meet the requirements of **paragraph (4) of this subsection** [subsection (c)(4) of this section]. The minimum size of the main underdrain shall be:

Figure: 16 TAC 12.364(c)(3)

(4) (No change.)

(d) (No change.)

(e) Surface-water runoff from the area above the fill shall be diverted away from the fill and into stabilized diversion channels designed to pass safely the runoff from a 100-year, 24-hour precipitation event or larger event specified by the Commission. Surface runoff from the fill surface shall be diverted to stabilized channels off the fill which will safely pass the runoff from a 100-year, 24-hour precipitation event. Diversion designs shall comply with the requirements of **§12.341(6)** [paragraph (6) of §12.341] of this title (relating to Hydrologic Balance: Diversions [and Conveyance of Overland Flow and Shallow Ground-Water Flow, and Ephemeral Streams]).

(f)-(h) (No change.)

§12.366. *Disposal of Excess Spoil: Durable Rock Fills.*

(a)-(d) (No change.)

(e) Surface water runoff from the areas adjacent to and above the fill shall not be allowed to flow onto the fill and shall be diverted into stabilized channels which are designed to pass safely the runoff from a 100-year, 24-hour precipitation event. Diversion design shall comply with the requirements of **§12.341(6)** [paragraph (6) of §12.341] of this title (relating to Hydrologic Balance: Diversions [and Conveyance of Overland Flow and Shallow Ground-Water Flow, and Ephemeral Streams]).

(f) (No change.)

(g) Surface runoff from the outslope of the fill shall be diverted off the fill to properly designed channels which will pass safely a 100-year, 24-hour precipitation event. Diversion design shall comply with the requirements of **§12.341(6)** [paragraph (6) of §12.341] of this title (relating to Hydrologic Balance: Diversions [and Conveyance of Overland Flow and Shallow Ground-Water Flow, and Ephemeral Streams]).

(h) (No change.)

§12.370. *Coal Processing Waste Banks: Water Control Measures.*

(a)-(c) (No change.)

(d) All water discharged from a coal processing waste bank shall comply with §§12.339, 12.340, 12.343, 12.344, 12.350, and 12.353 of this title (relating to Hydrologic Balance: General Requirements, to Hydrologic Balance: Water-Quality Standards and Effluent Limitations, to Hydrologic Balance: Sediment Control Measures, to Hydrologic Balance: **Siltation Structures** [Sedimentation Ponds], to Hydrologic Balance: Surface and Ground-Water Monitoring, and to Hydrologic Balance: Discharge of Water Into an [and] Underground Mine).

§12.375. *Disposal of Noncoal Wastes.*

(a) (No change.)

(b) Final disposal of noncoal wastes shall be in a designated disposal site in the permit area. Disposal sites shall be designed and constructed with appropriate water barriers on the bottom and sides of the designated site. Wastes shall be routinely compacted and covered to prevent combustion and wind-born waste. When the disposal is completed a minimum of 2 feet of soil cover shall be placed over the site, slopes stabilized, and revegetation accomplished in accordance with §§12.390-12.393, 12.395, and 12.396 of this title (relating to Revegetation: General Requirements, to Revegetation: Use of Introduced Species, to Revegetation: Timing, to Revegetation: Mulching and Other Stabilizing Practices, Revegetation: Standards for Success, and to Revegetation: Tree and Shrub Stocking for Forest Land) will be met. **Operation of the disposal site shall be conducted in accordance with all local, State, and Federal requirements.**

(c) **At no time shall any solid waste material be deposited at refuse embankments or impoundment sites, nor shall any excavation for solid waste disposal be located within 8 feet of any coal outcrop or coal storage area.**

(d) **Notwithstanding any other provision in this Chapter (relating to Coal Mining Regulations), any noncoal mine waste defined as "hazardous" under Section 3001 of the Resource Conservation and Recovery Act (RCRA)(Pub. L. 94-580, as amended) and 40 CFR Part 261 shall be handled in accordance with the requirements of Subtitle C of RCRA and any implementing regulations.**

§12.376. *Coal Mine [Processing] Waste: Dams and Embankments: General Requirements.*

(a) This section and §§12.377 and 12.378 of this title (relating to Coal **Mine** [Processing] Waste: Dams and Embankments: Site Preparation, and to Coal **Mine** [Processing] Waste: Dams and Embankments: Design and Construction) apply to dams and embankments, constructed of coal **mine** [processing] waste or intended to impound coal **mine** [processing] waste, whether they were completed before adoption of the regulatory program or are intended to be completed thereafter.

(b) **Coal mine** waste shall not be used in the construction of dams and embankments unless it has been demonstrated to the Commission that the stability of such a structure conforms with the requirements of **this section** [§12.378(a) of this title (relating to Coal Processing Waste: Dams and Embankments: Design and Construction)]. It shall also be demonstrated that the use of **coal mine** waste [material] shall not have a detrimental effect on downstream water quality or the environment due to acid seepage through the dam or embankment. The stability of the structure and the potential impact of acid mine seepage through the impounding structure shall be discussed in detail in the design plan submitted to the Commission in accordance with this chapter (relating to Coal Mining Regulations). All demonstrations shall be submitted to and approved by the Commission.

(c) (No change.)

(d) If an impounding structure constructed of coal mine waste or intended to impound coal mine waste meets the criteria of **the Mine Safety and Health Administration, 30 CFR 77.216(a)** [this chapter (relating to Coal Mining Regulations)], the combination of principal and emergency spillways shall be able to safely pass the **probable maximum precipitation of a 6-hour precipitation event,**

or greater event as specified by the Commission [100-year, 6-hour design precipitation event].

§12.377. *Coal **Mine** [Processing] Waste: Dams and Embankments: Site Preparation.*

Before coal **mine** [processing] waste is placed at a dam or embankment site:

(1) (No change.)

(2) surface drainage that may cause instability or erosion to the embankment area or the embankment features, whether during construction or after completion, shall be diverted away from the embankment by diversion ditches that comply with the requirements of §12.341 of this title (relating to Hydrologic Balance: Diversions [and Conveyance of Overland Flow and Shallow Ground-Water Flow, and Ephemeral Streams]). Adequate outlets for discharge from these diversions shall be in accordance with §12.345 of this title (relating to Hydrologic Balance: Discharge Structures). Diversions that are designed to divert drainage from the upstream area or drainage from the surface of the facility away from the impoundment area shall be designed to carry the peak runoff from a 100-year, 6-hour precipitation event. The diversion shall be maintained to prevent blockage, and the discharge shall be in accordance with §12.345 of this title (relating to Hydrologic Balance: Discharge Structures). Sediment control measures shall be provided at the discharge of each diversion ditch before entry into natural watercourses in accordance with §§12.339-**12.341, 12.343, and** 12.344 of this title (relating to Hydrologic Balance: General Requirements, to Hydrologic Balance: Water-Quality Standards and Effluent Limitations, to Hydrologic Balance: Diversions [and Conveyance of Overland Flow and Shallow Ground-Water Flow, and Ephemeral Streams, to Hydrologic Balance: Stream-Channel Diversions], to Hydrologic Balance: Sediment Control Measures, and to Hydrologic Balance: **Siltation Structures** [Sedimentation Ponds]).

§12.378. *Coal **Mine** [Processing] Waste: Dams and Embankments: Design and Construction.*

(a) The design of each dam and embankment constructed of coal **mine** [processing] waste or intended to impound such waste shall comply with the requirements of **§12.347(a) and (c)** [§12.347(b)(5) and 12.347(f) through (j)] of this title (relating to Hydrologic Balance: Permanent and Temporary Impoundments), modified as follows:

(1)-(3) (No change.)

(b) (No change.)

(c) **For an impounding structure** [Dams or embankments] constructed of or impounding **coal mine waste**, [waste materials shall be designed so that] at least 90% of the water stored during the design precipitation event shall be removed within **the** [a] 10-day period **following the design precipitation event**.

§12.380. *Protection of Fish, Wildlife, and Related Environmental Values.*

(a)-(d) (No change.)

(e) Each person who conducts surface mining activities shall, to the extent possible using the best technology currently available:

(1)-(5) (No change.)

(6) afford protection to aquatic communities by avoiding stream channels as required in §12.355 of this title (relating to Hydrologic Balance: Stream Buffer Zones) or restoring stream

channels as required in **§12.341 of this title (relating to Hydrologic Balance: Diversions)** [§12.342 of this title (relating to Hydrologic Balance: Stream-Channel Diversions)];

(7)-(8) (No change.)

(9) if fish and wildlife habitat is to be a primary or secondary postmining land use, the operator shall in addition to the requirements of §§12.390-12.393 **and** [,] 12.395 [, and 12.396] of this title (relating to Revegetation: General Requirements, to Revegetation: Use of Introduced Species, to Revegetation: Timing, to Revegetation: Mulching and Other Stabilizing Practices, **and to** Revegetation: Standards for Success [, and to Revegetation: Tree and Shrub Stocking for Forest Land]):

(A)-(B) (No change.)

(10) where cropland is to be the [alternative] postmining land use [on lands diverted from a fish and wildlife premining land use] and where appropriate for wildlife and crop management practices, intersperse the fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals. Wetlands shall be preserved or created rather than drained or otherwise permanently abolished; and

(11) (No change.)

§12.385. *Backfilling and Grading: General Grading Requirements.*

(a) (No change.)

(b) On approval by the Commission in order to conserve soil moisture, ensure stability, and control erosion on final graded slopes, cut-and-fill terraces may be allowed, if the terraces are compatible with the approved postmining land use and are appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces shall meet the following requirements:

(1)-(2) (No change.)

(3) the slope of the terrace outslope shall not exceed 2h:1v (50%). [Outslopes which exceed 2h:1v (50%) may be approved, if they have a minimum static safety factor of more than 1.3, provide adequate control over erosion, and closely resemble the surface configuration of the land prior to mining.] In no case may highwalls be left as part of terraces; and

(4) (No change.)

(c)-(d) (No change.)

§12.387. *Backfilling and Grading: Thin Overburden.*

(a) The provisions of this section apply only where the final thickness is less than 0.8 times the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness prior to removal of coal. Final thickness is the product of the overburden thickness prior to removal of coal, times the bulking factor to be determined for each **permit** [mine plan] area. The provisions of this section apply only when surface mining activities cannot be carried out to comply with §12.384 of this title (relating to Backfilling and Grading: General Requirements) to achieve the approximate original contour.

(b) In surface mining activities carried out continuously in the same limited pit area for more than 1 year from the day coal removal operations begin and where the volume of all available spoil and suitable waste materials over the **permit** [mine plan] area is

demonstrated to be insufficient to achieve the approximate original contour of the lands disturbed, surface mining activities shall be conducted to meet, at a minimum, the following standards:

(1)-(2) (No change.)

(3) haul or convey, backfill, grade, and revegetate in accordance with §§12.390-12.393 [,] **and** 12.395 [, and 12.396] of this title (relating to Revegetation: General Requirements, to Revegetation: Use of Introduced Species, to Revegetation: Timing, to Revegetation: Mulching and Other Stabilizing Practices, **and** to Revegetation: Standards for Success [, and to Revegetation: Tree and Shrub Stocking for Forest Land]), to achieve an ecologically sound land use compatible with the prevailing use in unmined areas surrounding the **permit** [mine plan] area; and

(4) haul or convey, backfill and grade, to ensure impoundments are constructed only where:

(A) it has been demonstrated to the Commission's satisfaction that all requirements of §§12.339-**12.341**, **and §§12.343-**12.354 of this title (relating to Hydrologic Balance: General Requirements, to Hydrologic Balance: Water-Quality Standards and Effluent Limitations, to Hydrologic Balance: Diversions [and Conveyance of Overland Flow and Shallow Ground-Water Flow, and Ephemeral Streams, to Hydrologic Balance: Stream-Channel Diversions], to Hydrologic Balance: Sediment Control Measures, to Hydrologic Balance: **Siltation Structures** [Sedimentation Ponds], to Hydrologic Balance: Discharge Structures, to Hydrologic Balance: Acid-Forming and Toxic-Forming Spoil, to Hydrologic Balance: Permanent and Temporary Impoundments, to Hydrologic Balance: Ground-Water Protection, to Hydrologic Balance: **Surface-Water** Protection [of Ground-Water Recharge Capacity], to Hydrologic Balance: Surface and Ground-Water Monitoring, to Hydrologic Balance: Transfer of Wells, to Hydrologic Balance: Water Rights and Replacement, to Hydrologic Balance: Discharge of Water Into an Underground Mine, and to Hydrologic Balance: Postmining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities) have been met; and

(B) (No change.)

§12.388. *Backfilling and Grading: Thick Overburden.*

(a) The provisions of this section apply only where the final thickness is greater than 1.2 times the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness prior to removal of coal. Final thickness is the product of the overburden thickness prior to removal of coal times the bulking factor to be determined for each **permit** [mine plan] area. The provisions of this section apply only when surface mining activities cannot be carried out to comply with §12.384 of this title (relating to Backfilling and Grading: General Requirements) to achieve the approximate original contour.

(b) In surface mining activities when the volume of spoil over the **permit** [mine plan] area is demonstrated to be more than sufficient to achieve the approximate original contour, surface mining activities shall be conducted to meet, at a minimum, the following standards:

(1) haul or convey, backfill, and grade all spoil and wastes, not required to achieve the approximate original contour of the **permit** [mine plan] area, to the lowest practicable grade, to achieve a static factor of safety of 1.3 and cover all acid-forming and other toxic-forming materials;

(2) (No change.)

(3) haul or convey, backfill, and grade excess spoil and wastes to maintain the hydrologic balance, in accordance with §§12.339-**12.341**, **and §§12.343-**12.355 of this title (relating to Hydrologic Balance: General Requirements, to Hydrologic Balance: Water-Quality Standards and Effluent Limitations, to Hydrologic Balance: Diversions [and Conveyance of Overland Flow and Shallow Ground-Water Flow, and Ephemeral Streams, to Hydrologic Balance: Stream-Channel Diversions], to Hydrologic Balance: Sediment Control Measures, to Hydrologic Balance: **Siltation Structures** [Sedimentation Ponds], to Hydrologic Balance: Discharge Structures, to Hydrologic Balance: Acid-Forming and Toxic-Forming Spoil, to Hydrologic Balance: Permanent and Temporary Impoundments, to Hydrologic Balance: Ground-Water Protection, to Hydrologic Balance: **Surface-Water** Protection [of Ground-Water Recharge Capacity], to Hydrologic Balance: Surface and Ground-Water Monitoring, to Hydrologic Balance: Transfer of Wells, to Hydrologic Balance: Water Rights and Replacement, to Hydrologic Balance: Discharge of Water Into an Underground Mine, to Hydrologic Balance: Postmining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities, and to Hydrologic Balance: Stream Buffer Zones) and to provide long-term stability by preventing slides, erosion and water pollution;

(4) haul or convey, backfill, grade, and revegetate wastes and excess spoil to achieve an ecologically sound land use approved by the Commission as compatible with the prevailing land uses in unmined areas surrounding the **permit** [mine plan] area;

(5) (No change.)

(6) Meet the vegetation requirements of §§12.390-12.393 [,] and 12.395 [, and 12.396] of this title (relating to Revegetation: General Requirements, to Revegetation: Use of Introduced Species, to Revegetation: Timing, to Revegetation: Mulching and Other Stabilizing Practices, **and** to Revegetation: Standards for Success [, and to Revegetation: Tree and Shrub Stocking for Forest Land]) for all disturbed areas.

§12.390. *Revegetation: General Requirements.*

(a) The permittee shall establish on regraded areas and on all other disturbed areas except water areas and surface areas of roads that are approved as part of the postmining land use, a vegetative cover that is in accordance with the approved permit and reclamation plan and that is:

(1) diverse, effective, and permanent;

(2) comprised of species native to the area, or of introduced species where desirable and necessary to achieve the approved postmining land use and approved by the Commission;

(3) at least equal in extent of cover to the natural vegetation of the area; and

(4) capable of stabilizing the soil surface from erosion.

(b) The reestablished plant species shall:

(1) be compatible with the approved postmining land use;

(2) have the same seasonal characteristics of growth as the original vegetation;

(3) be capable of self-regeneration and plant succession;

(4) be compatible with the plant and animal species of the area; and

(5) meet the requirements of applicable state and federal seed, poisonous and noxious plant, and introduced species laws or regulations.

(c) The Commission may grant exception to the requirements of subsection (b)(2) and (3) of this section when the species are necessary to achieve a quick-growing, temporary, stabilizing cover, and measures to establish permanent vegetation are included in the approved permit and reclamation plan.

(d) When the Commission approves a cropland postmining land use, the Commission may grant exception to the requirements of subsections (a)(1), (a)(3), (b)(2), and (b)(3) of this section. The requirements of §§12.620-12.622, 12.624, and 12.625 of this title (relating to Special Permanent Program Performance Standards - Operations on Prime Farmland) apply to areas identified as prime farmland.

§12.395. Revegetation: Standards For Success.

(a) Comparison to an established standard. Success of revegetation shall be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in natural vegetation of the area, and the general requirements of §§12.390 and 12.391 of this title (relating to Revegetation: General Requirements, and to Revegetation: Use of Introduced Species).

(1) Standards for success and statistically valid sampling techniques for measuring success shall be selected by the Commission.

(2) Standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90% of the success standard. The sampling techniques for measuring success shall use a 90-percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error).

(b) Standard for revegetated success. Standards for success shall be applied in accordance with the approved postmining land use and, at a minimum, the following conditions:

(1) for areas developed as grazingland, pastureland, or undeveloped land use, the ground cover and production of living plants on the revegetated area shall be at least equal to that of a reference area or such other success standards approved by the Commission;

(2) for areas developed for use as cropland, crop production on the revegetated area shall be at least equal to that of a reference area or such other success standards approved by the Commission;

(3) for areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products, success of vegetation shall be determined on the basis of tree and shrub stocking and vegetative ground cover. Such parameters are described as follows:

(A) minimum stocking and planting arrangements shall be specified by the Commission on the basis of local and regional conditions and after consultation with and approval by the state agencies responsible for the administration of forestry and wildlife programs;

(B) trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved postmining land use. Trees and shrubs counted in determining such success shall be healthy and have been in place for not less than two growing seasons. At the time of bond release, at least 80% of the trees and shrubs used to determine such success shall have been in place for 60% of the applicable minimum period of responsibility; and

(C) vegetative ground cover shall not be less than that required to achieve the approved postmining land use;

(4) for areas to be developed for industrial/commercial or residential land use less than 2 years after regrading is completed, the vegetative ground cover shall not be less than that required to control erosion; and

(5) for areas previously disturbed by mining that were not reclaimed to the requirements of this subchapter (relating to Permanent Program Performance Standards) and that are mined or otherwise redisturbed by surface coal mining operations, as a minimum, the vegetative ground cover shall be not less than the ground cover existing before redisturbance and shall be adequate to control erosion.

(c) Extended responsibility period.

(1) The period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the Commission in accordance with paragraph (4) of this subsection.

(2) In areas of more than 26.0 inches of annual average precipitation, the period of responsibility shall continue for a period of not less than five full years. Vegetation parameters identified in §12.395(b) of this title (relating to Revegetation: Standards for Success) for grazingland or pastureland and cropland shall equal or exceed the approved success standard during the growing seasons of any two years of the responsibility period, except the first year. Areas approved for the other land uses identified in §12.395(b) of this title (relating to Revegetation: Standards for Success) shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

(3) In areas of 26.0 inches or less average annual precipitation, the period of responsibility shall continue for a period of not less than 10 full years. Vegetation parameters identified in §12.395(b) of this title (relating to Revegetation: Standards for Success) shall equal or exceed the approved success standard for at least the last 2 consecutive years of the responsibility period.

(4) The Commission may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, provided it obtains prior approval from the Director, Office of Surface Mining Reclamation and Enforcement in accordance with 30 CFR 732.17 that the practices are normal husbandry practices, without extending the period of responsibility for revegetation success and bond liability if such practices can be expected to continue as part of the postmining land use or if the discontinuance of the practices will not reduce the probability of permanent revegetation success. Approved practices shall be normal husbandry practices within the region for unmined land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest,

and vermin control; and any pruning, reseeding, and transplanting, specifically necessary by such actions.

§12.400. *Roads: General.*

(a)-(c) (No change.)

(d) Location.

(1) No part of any road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the Commission in accordance with applicable §§12.339-**12.341, and §§12.343-12.355** of this title (relating to Hydrologic Balance: General Requirements, to Hydrologic Balance: Water-Quality Standards and Effluent Limitations, to Hydrologic Balance: Diversions [and Conveyance of Overland Flow and Shallow Ground-Water Flow, and Ephemeral Streams, to Hydrologic Balance: Stream-Channel Diversions], to Hydrologic Balance: Sediment Control Measures, to Hydrologic Balance: **Siltation Structures** [Sedimentation Ponds], to Hydrologic Balance: Discharge Structures, to Hydrologic Balance: Acid-Forming and Toxic-Forming Spoil, to Hydrologic Balance: Permanent and Temporary Impoundments, to Hydrologic Balance: Ground-Water Protection, to Hydrologic Balance: **Surface-Water** Protection [of Ground-Water Recharge Capacity], to Hydrologic Balance: Surface and Ground-Water Monitoring, to Hydrologic Balance: Transfer of Wells, to Hydrologic Balance: Water Rights and Replacement, to Hydrologic Balance: Discharge of Water Into an Underground Mine, to Hydrologic Balance: Postmining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities, and to Hydrologic Balance: Stream Buffer Zones).

(2) (No change.)

(e) (No change.)

(f) Reclamation. A road not to be retained under an approved postmining land use shall be reclaimed in accordance with the approved reclamation plan as soon as practicable after it is no longer needed for mining and reclamation operations. This reclamation shall include:

(1)-(5) (No change.)

(6) scarifying or ripping the roadbed; replacing topsoil or substitute material, and revegetating disturbed surfaces in accordance with §§12.334-12.338 of this title (**relating to Topsoil: General Requirements, to Topsoil: Removal, to Topsoil: Storage, to Topsoil: Redistribution, and to Topsoil: Nutrients and Soil Amendments**), and §§12.390-12.393, and 12.395 [, and 12.396] of this title (relating to Revegetation: General Requirements, to Revegetation: Use of Introduced Species, to Revegetation: Timing, to Revegetation: Mulching and Other Stabilizing Practices, and to Revegetation: Standards for Success [, and to Revegetation: Tree and Shrub Stocking for Forest Land]).

§12.401. *Primary Roads.*

Primary roads shall meet the requirements of §12.400 of this title (relating to Roads: General) and the additional requirements of this section.

(1)-(3) (No change.)

(4) Drainage control. In accordance with the approved plan:

(A)-(D) (No change.)

(E) Natural stream channels shall not be altered or relocated without the prior approval of the Commission in accordance with applicable §§12.339 through **12.341, and §§12.343-12.355** of this title (relating to Hydrologic Balance: General Requirements, to Hydrologic Balance: Water-Quality Standards and Effluent Limitations, to Hydrologic Balance: Diversions [and Conveyance of Overland Flow and Shallow Ground-Water Flow, and Ephemeral Streams, to Hydrologic Balance: Stream-Channel Diversions], to Hydrologic Balance: Sediment Control Measures, to Hydrologic Balance: **Siltation Structures** [Sedimentation Ponds], to Hydrologic Balance: Discharge Structures, to Hydrologic Balance: Acid-Forming and Toxic-Forming Spoil, to Hydrologic Balance: Permanent and Temporary Impoundments, to Hydrologic Balance: Ground-Water Protection, to Hydrologic Balance: **Surface-Water** Protection [of Ground-Water Recharge Capacity], to Hydrologic Balance: Surface and Ground-Water Monitoring, to Hydrologic Balance: Transfer of Wells, to Hydrologic Balance: Water Rights and Replacement, to Hydrologic Balance: Discharge of Water Into an Underground Mine, to Hydrologic Balance: Postmining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities, and to Hydrologic Balance: Stream Buffer Zones); and

(F) (No change.)

(5) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on July 25, 1997.

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Mary Ross McDonald

Deputy General Counsel, Office of General Counsel

Railroad Commission of Texas

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For further information, please call: (512) 463-7008



Subchapter G. Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Procedures Systems

Permanent Program Performance Standards - Surface Mining Activities

16 TAC §§12.340-12.342, 12.344, 12.347-12.350, 12.355, 12.390, 12.395, 12.396

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the proposed repeals.

§12.340. *Hydrologic Balance: Water-Quality Standards and Effluent Limitations.*

§12.341. *Hydrologic Balance: Diversions and Conveyance of Overland Flow and Shallow Ground-Water Flow, and Ephemeral Streams.*

§12.342. *Hydrologic Balance: Stream-Channel Diversions.*

§12.344. *Hydrologic Balance: Sedimentation Ponds.*

§12.347. *Hydrologic Balance: Permanent and Temporary Impoundments.*

§12.348. *Hydrologic Balance: Ground-Water Protection.*

§12.349. *Hydrologic Balance: Protection of Ground-Water Recharge Capacity.*

§12.350. *Hydrologic Balance: Surface and Ground-Water Monitoring.*

§12.355. *Hydrologic Balance: Stream Buffer Zones.*

§12.390. *Revegetation: General Requirements.*

§12.395. *Revegetation: Standards For Success.*

§12.396. *Revegetation: Tree and Shrub Stocking for Forest Land*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Subchapter K. Permanent Program Performance Standards

Permanent Program Performance Standards - Underground Mining Activities

16 TAC §§12.509-12.511, 12.514, 12.517, 12.519, 12.522, 12.524, 12.526-12.528, 12.530-12.545, 12.547, 12.552, 12.554, 12.555, 12.560, 12.569, 12.570

The new sections and amendments are proposed under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the proposed new sections and amendments:

§12.509. *Hydrologic Balance: General Requirements.*

(a) Underground mining activities shall be planned and conducted to minimize disturbance of the hydrologic balance within the permit and adjacent areas, to prevent material damages to the hydrologic balance outside the permit area, to assure the protection or replacement of water rights, and to support approved postmining land uses in accordance with the terms and conditions of the approved permit and the performance standards of §§12.500-12.508, this section, and §§12.510-12.572 of this title (relating to Permanent

Program Performance Standards – Underground Mining Activities). The Commission may require additional preventative, remedial, or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented. **Mining** [Surface mining] and reclamation practices that minimize water pollution and changes in flow shall be used in preference to water treatment.

(b)-(d) (No change.)

§12.510. *Hydrologic Balance: Water-Quality Standards and Effluent Limitations.*

Discharge of water from areas disturbed by underground mining activities shall be made in compliance with all applicable state and federal water-quality laws and regulations and with the effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency set forth in 40 CFR 434.

§12.511. *Hydrologic Balance: Diversions.*

(a) General Requirements.

(1) With the approval of the Commission, any flow from mined areas abandoned before May 3, 1978, and any flow from undisturbed areas or reclaimed areas, after meeting the criteria of §12.514 of this title (relating to Hydrologic Balance: Siltation Structures) for siltation-structure removal, may be diverted from disturbed areas by means of temporary or permanent diversions. All diversions shall be designed to minimize adverse impacts to the hydrologic balance within the permit and adjacent areas, to prevent material damage outside the permit area and to assure the safety of the public. Diversions shall not be used to divert water into underground mines without approval of the Commission under §12.522 of this title (relating to Hydrologic Balance: Discharge of Water Into an Underground Mine).

(2) The diversion and its appurtenant structures shall be designed, located, constructed, maintained and used to:

(A) be stable;

(B) provide protection against flooding and resultant damage to life and property;

(C) prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow outside the permit area; and

(D) comply with all applicable local, state, and federal laws and regulations.

(3) Temporary diversions shall be removed when no longer needed to achieve the purpose for which they were authorized. The land disturbed by the removal process shall be restored in accordance with §§12.500-12.510, this section, and §§12.513-12.572 of this title (relating to Permanent Program Performance Standards - Underground Mining Activities). Before diversions are removed, downstream water-treatment facilities previously protected by the diversion shall be modified or removed, as necessary, to prevent overtopping or failure of the facilities. This requirement shall not relieve the operator from maintaining water-treatment facilities as otherwise required. A permanent diversion or a stream channel reclaimed after the removal of a temporary diversion shall be designed and constructed so as to restore or approximate the premining characteristics of the original stream channel, including the natural riparian vegetation to promote the recovery and the enhancement of aquatic habitat.

(4) Diversion designs shall incorporate the following:

(A) be constructed with gentle sloping banks that are stabilized by vegetation. Asphalt, concrete or other similar linings shall be used only when approved by the Commission to prevent seepage or to provide stability. Channel linings shall be designed using standard engineering practices to pass safely the design velocities and shall be approved for permanent diversions only where they are stable and will require infrequent maintenance;

(B) erosion protection shall be provided for transition of flows and for critical areas such as swales and curves;

(C) energy dissipators shall be installed when necessary at discharge points, where diversions intersect with natural streams and exit velocities of the diversion ditch flow is greater than that of the receiving stream;

(D) excess excavated material not necessary for diversion channel geometry or regrading of the channel shall be disposed of in accordance with §§12.531-12.534 of this title (relating to Disposal of Underground Development Waste and Excess Spoil: General Requirements, to Disposal of Underground Development Waste and Excess Spoil: Valley Fills, to Disposal of Underground Development Waste and Excess Spoil: Head-of-Hollow Fills, and to Disposal of Underground Development Waste and Excess Spoil: Durable Rock Fills); and

(E) topsoil shall be handled in compliance with §§12.504-12.508 of this title (relating to Topsoil: General Requirements, to Topsoil: Removal, to Topsoil: Storage, to Topsoil: Redistribution, and to Topsoil: Nutrients and Soil Amendments).

(b) Diversions of Perennial and Intermittent Streams.

(1) Diversions of perennial and intermittent streams within the permit area may be approved by the Commission after making the finding relating to stream buffer zones called for in §12.524 of this title (relating to Hydrologic Balance: Stream Buffer Zones) that the diversion will not adversely affect the water quantity and quality and related environmental resources of the stream.

(2) The design capacity of channels for temporary and permanent stream channel diversions shall be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream from the diversion.

(3) The requirements of subsection (a)(2)(B) of this section shall be met when the temporary and permanent diversions for perennial and intermittent streams are designed so that the combination of channel, bank and floodplain configuration is adequate to pass safely the peak runoff of a 10-year, 6-hour precipitation event for a temporary diversion, and a 100-year, 6-hour precipitation event for a permanent diversion.

(4) The design and construction of all stream channel diversions of perennial and intermittent streams shall be certified by a qualified registered professional engineer as meeting the performance standards of §§12.500-12.572 of this title (relating to Permanent Program Performance Standards - Underground Mining Activities) and any design criteria set by the Commission.

(c) Diversion of Miscellaneous Flows.

(1) Miscellaneous flows, which consists of all flows except for perennial and intermittent streams, may be diverted away from disturbed areas if required and approved by the Commission.

Miscellaneous flows shall include ground-water discharges and ephemeral streams.

(2) The design, location, construction, maintenance, and removal of diversions of miscellaneous flows shall meet all of the performance standards set forth in subsection (a) of this section.

(3) The requirements of subsection (a)(2)(B) of this section shall be met when the temporary and permanent diversions for miscellaneous flows are designed so that the combination of channel, bank and flood-plain configuration is adequate to pass safely the peak runoff of a 2-year, 6-hour precipitation event for a temporary diversion, and a 10-year, 6-hour precipitation event for a permanent diversion.

§12.514. Hydrologic Balance: Siltation Structures.

(a) Scope. For the purposes of this section only, disturbed areas shall not include those areas:

(1) in which the only underground mining activities include diversion ditches, siltation structures, or roads that are designed, constructed and maintained in accordance with §§12.500-12.513, this section, and §§12.515-12.572 of this title (relating to Permanent Program Performance Standards - Underground Mining Activities); and

(2) for which the upstream area is not otherwise disturbed by the operator.

(b) General requirements.

(1) Additional contributions of suspended solids sediment to streamflow or runoff outside the permit area shall be prevented to the extent possible using the best technology currently available.

(2) All surface drainage from the disturbed area shall be passed through a siltation structure before leaving the permit area, except as provided in paragraph (5) of this subsection or in subsection (e) of this section.

(3) Siltation structures for an area shall be constructed before beginning any underground mining activities in that area, and upon construction shall be certified by a qualified registered professional engineer to be constructed as designed and as approved in the reclamation plan.

(4) Any siltation structure which impounds water shall be designed, constructed and maintained in accordance with §12.517 of this title (relating to Hydrologic Balance: Permanent and Temporary Impoundments).

(5) Siltation structures shall be maintained until the disturbed area has been stabilized and revegetated and removal is authorized by the Commission. In no case shall the structure be removed sooner than 2 years after the last augmented seeding.

(6) When a siltation structure is removed, the land on which the siltation structure was located shall be regraded and revegetated in accordance with the reclamation plan and §§12.555-12.560 of this title (relating to Revegetation: General Requirements, to Revegetation: Use of Introduced Species, to Revegetation: Timing, to Revegetation: Mulching and Other Soil Stabilizing Practices, to Revegetation: Grazing, and to Revegetation: Standards for Success). Sedimentation ponds approved by the Commission for retention as permanent impoundments may be exempted from this requirement.

(c) Sedimentation ponds.

(1) When used, sedimentation ponds shall:

(A) be used individually or in series;

(B) be located as near as possible to the disturbed area and out of perennial streams unless approved by the Commission, and

(C) be designed, constructed, and maintained to:

(i) provide adequate sediment storage volume. The minimum sediment storage volume shall be equal to the three year accumulated sediment volume from the drainage area to the pond. The sediment volume shall be determined using the Universal Soil Loss Equation, gully erosion rates, and the sediment delivery ratio converted to sediment volume, using either the sediment density or other empirical methods approved by the Commission;

(ii) provide adequate detention time to allow the effluent from the ponds to meet state and federal effluent limitations. The minimum detention time without a chemical treatment process shall be 10 hours;

(iii) contain or treat the 10-year, 24-hour precipitation event ("design event") unless a lesser design event is approved by the Commission based on terrain, climate, other site-specific conditions and on a demonstration by the operator that the effluent limitations of §12.510 of this title (relating to Hydrologic Balance: Water-Quality Standards and Effluent Limitations) will be met;

(iv) provide a nonclogging dewatering device adequate to maintain the detention time required under clause (ii) of this subparagraph;

(v) minimize, to the extent possible, short circuiting;

(vi) provide periodic sediment removal sufficient to maintain adequate volume for the design event;

(vii) ensure against excessive settlement;

(viii) be free of sod, large roots, frozen soil, and acid- or toxic-forming coal mine waste; and

(ix) be compacted properly.

(2) A sedimentation pond shall include either a combination of principal and emergency spillways or single spillway configured as specified in §12.517(a)(9) of this title (relating to Hydrologic Balance: Permanent and Temporary Impoundments).

(d) Other treatment facilities.

(1) Other treatment facilities shall be designed to treat the 10-year, 24-hour precipitation event unless a lesser design event is approved by the Commission based on terrain, climate, other site-specific conditions and a demonstration by the operator that the effluent limitations of §12.510 of this title (relating to Hydrologic Balance: Water-Quality Standards and Effluent Limitations) will be met.

(2) Other treatment facilities shall be designed in accordance with the applicable requirements of subsection (c) of this section.

(e) Exemptions. Exemptions to the requirements of this section may be granted if:

(1) The disturbed drainage area within the total disturbed area is small; and

(2) The operator demonstrates that siltation structures and alternate sediment control measures are not necessary for drainage from the disturbed area to meet the effluent limitations under §12.510 of this title (relating to Hydrologic Balance: Water-Quality Standards and Effluent Limitations) and the applicable state and federal water-quality standards for the receiving waters.

§12.517. *Hydrologic Balance: Permanent and Temporary Impoundments.*

(a) General Requirements. The requirements of this subsection apply to both temporary and permanent impoundments.

(1) Impoundments meeting the Class B or C criteria of dams in the U.S. Department of Agriculture, Natural Resources Conservation Service Technical Release No. 60 (210-VI-TR60, Oct. 1985), *Earth Dams and Reservoirs*, shall comply with *Minimum Emergency Spillway Hydrologic Criteria* table in TR-60 and the requirements of this section. The Technical Release No. 60 is hereby incorporated by reference. Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, Order No. PB 87-157509/AS. Copies can be inspected at the Commission's Surface Mining and Reclamation Division Office at 1701 North Congress Avenue, Austin, Texas.

(2) An impoundment meeting the size or other criteria of 30 CFR 77.216(a) shall comply with the requirements of 30 CFR 77.216 and of this section.

(3) The design of impoundments shall be certified in accordance with §12.190(a) of this title (relating to Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments) as designed to meet the requirements of this part using current, prudent, engineering practices and any design criteria established by the Commission. The qualified, registered professional engineer shall be experienced in the design and construction of impoundments.

(4) Stability.

(A) An impoundment meeting the Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a) shall have a minimum static factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

(B) An impoundment not included in subparagraph (A) of this paragraph, except for a coal mine waste impounding structure, shall have a minimum static safety factor of 1.3 for a normal pool with steady-state seepage saturation conditions or meet the requirements of §12.190(c) of this title (relating to Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments).

(5) Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. Impoundments meeting the Class B or C criteria for dams in TR-60 shall comply with the freeboard hydrograph criteria in the *Minimum Emergency Spillway Hydrologic Criteria* table in TR-60.

(6) Foundations.

(A) Foundations and abutments for an impounding structure shall be stable during all phases of construction and operation and shall be designed based on adequate and accurate information on the foundation conditions. For an impoundment meeting the Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a), foundation investigation, as

well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability.

(B) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

(7) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

(8) Faces of embankments and surrounding areas shall be vegetated, except that faces where water is impounded may be riprapped or otherwise stabilized in accordance with accepted design practices.

(9) An impoundment shall include either a combination of principal and emergency spillways or a single spillway configured as specified in subparagraph (A) of this paragraph, designed and constructed to safely pass the applicable design precipitation event specified in subparagraph (B) of this paragraph.

(A) The Commission may approve a single open-channel spillway that is of nonerodible construction and designed to carry sustained flows or earth- or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

(B) Except as specified in subsection (c)(2) of this section, the required design precipitation event for an impoundment meeting the spillway requirements of this paragraph is:

(i) for an impoundment meeting the Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the *Minimum Emergency Spillway Hydrologic Criteria* table in TR-60, or greater event as specified by the Commission;

(ii) for an impoundment meeting or exceeding the size or other criteria of 30 CFR 77.216(a), a 100-year, 6-hour event, or greater event as specified by the Commission; and

(iii) for an impoundment not included in subparagraphs (A) and (B) of this paragraph, a 25-year, 6-hour event, or greater event as specified by the Commission.

(10) The vertical portion of any remaining highwall shall be located far enough below the low-water line along the full extent of the highwall to provide adequate safety and access for the proposed water users.

(11) A qualified registered professional engineer or other qualified professional specialist under the direction of a professional engineer, shall inspect each impoundment as provided in subparagraph (A) of this paragraph. The professional engineer or specialist shall be experienced in the construction of impoundments.

(A) Inspections shall be made regularly during construction, upon completion of the construction, and at least yearly until removal of the structure or release of the performance bond.

(B) The qualified registered professional engineer shall promptly after each inspection required in subparagraph (A) of this paragraph provide the Commission a certified report that the impoundment has been constructed and/or maintained as designed and in accordance with the approved plan and this chapter. The report shall include discussion of any appearance of instability, structural weakness or other hazard condition, depth and elevation of any

impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability.

(C) A copy of the report shall be retained at or near the minesite.

(12) Impoundments meeting the NRCS Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216 must be examined in accordance with 30 CFR 77.216-3. Impoundments not meeting the NRCS Class B or C criteria for dams in TR-60, or subject to 30 CFR 77.216, shall be examined at least quarterly. A qualified person designated by the operator shall examine impoundments for the appearance of structural weakness and other hazardous conditions.

(13) If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the Commission of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the Commission shall be notified immediately. The Commission shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(b) Permanent Impoundments. A permanent impoundment of water may be created, if authorized by the Commission in the approved permit based upon the following demonstration:

(1) the size and configuration of such impoundment will be adequate for its intended purposes;

(2) the quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable state and federal water-quality standards, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable state and federal water-quality standards;

(3) the water level will be sufficiently stable and be capable of supporting the intended use;

(4) final grading will provide for adequate safety and access for proposed users;

(5) the impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses; and

(6) the impoundment will be suitable for the approved postmining land use.

(c) Temporary Impoundments.

(1) The Commission may authorize the construction of temporary impoundments as part of an underground coal mining operation.

(2) In lieu of meeting the requirements of subsection (a)(9)(A) of this section, the Commission may approve an impoundment that relies primarily on storage to control the runoff from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer that the impoundment will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent engineering practices. Such an impoundment shall be

located where failure would not be expected to cause loss of life or serious property damage, except where:

(A) impoundments meeting the NRCS Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a), shall be designed to control the precipitation of the probable maximum precipitation of a 6-hour event, or greater event as specified by the Commission; and

(B) impoundments not included in subparagraph (A) of this paragraph shall be designed to control the precipitation of the 100-year, 6-hour event, or greater event as specified by the Commission.

§12.519. Hydrologic Balance: Surface and Ground-Water Monitoring.

(a) Ground water.

(1) Ground-water monitoring shall be conducted according to the ground-water monitoring plan approved under §12.188(b) of this title (relating to Reclamation Plan: Protection of Hydrologic Balance). The Commission may require additional monitoring when necessary.

(2) Ground-water monitoring data shall be submitted every 3 months to the Commission or more frequently as prescribed by the Commission. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any ground-water sample indicates noncompliance with the permit conditions, then the operator shall promptly notify the Commission and immediately take the action provided for in §§12.221(a) and 12.188(a) of this title (relating to Conditions of Permits: Environment, Public Health, and Safety, and to Reclamation Plan: Protection of Hydrologic Balance).

(3) Ground-water monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with the procedures of §§12.207-12.221 of this title (relating to Review, Public Participation, and Approval of Permit Applications and Permit Terms and Conditions), the Commission may modify the monitoring requirements, including the parameters covered and the sampling frequency, if the operator demonstrates, using the monitoring data obtained under this subsection, that:

(A) the operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; and the water rights of other users have been protected or replaced; or

(B) monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under §12.188(b) of this title (relating to Reclamation Plan: Protection of Hydrologic Balance).

(4) Equipment, structures, and other devices used in conjunction with monitoring the quality and quantity of ground water onsite and offsite shall be properly installed, maintained, and operated and shall be removed when no longer needed.

(b) Surface water.

(1) Surface-water monitoring shall be conducted according to the surface-water monitoring plan approved under §12.188(c) of this title (relating to Reclamation Plan: Protection of Hydrologic

Balance). The Commission may require additional monitoring when necessary.

(2) Surface-water monitoring data shall be submitted every 3 months to the Commission or more frequently as prescribed by the Commission. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any surface-water sample indicates noncompliance with the permit conditions, then the operator shall promptly notify the Commission and immediately take the action provided for in §§12.221(a) and 12.188(a) of this title (relating to Conditions of Permits: Environment, Public Health, and Safety, and to Reclamation Plan: Protection of Hydrologic Balance). The reporting requirements of this paragraph do not exempt the operator from meeting any National Pollutant Discharge Elimination System (NPDES) requirements.

(3) Surface-water monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with the procedures of §§12.207-12.221 of this title (relating to Review, Public Participation, and Approval of Permit Applications and Permit Terms and Conditions), the Commission may modify the monitoring requirements, except those required by the NPDES permitting authority, including the parameters covered and the sampling frequency, if the operator demonstrates, using the monitoring data obtained under this subsection, that:

(A) the operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; and the water rights of other users have been protected or replaced; or

(B) monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under §12.188(c) of this title (relating to Reclamation Plan: Protection of Hydrologic Balance).

(4) Equipment, structures, and other devices used in conjunction with monitoring the quality and quantity of surface water onsite and offsite shall be properly installed, maintained, and operated and shall be removed when no longer needed.

§12.522. Hydrologic Balance: Discharge of Water Into an Underground Mine.

Water from the surface or from an underground mine shall not be diverted or discharged into other underground mine workings, unless the person who conducts the underground mining activities demonstrates to the Commission that the discharge will:

(1) abate water pollution or otherwise eliminate public hazards resulting from underground mining activities;

(2) be discharged as a controlled flow;

(3) meet the effluent limitations referenced in §12.510 of this title (relating to Hydrologic Balance: Water-Quality Standards and Effluent Limitations) for pH and total suspended solids, except that the pH and total suspended solid limitations may be exceeded, if approved by the Commission, and the discharge is limited to:

(A) coal processing waste;

(B) underground mine development waste;

(C) fly ash from a coal-fired facility;

(D) sludge from an acid mine drainage treatment facility;

(E) flue-gas desulfurization sludge; or

(F) inert materials used for stabilizing underground mines;

(4) continue as a controlled and identifiable flow and is ultimately treated by an existing treatment facility;

(5) in any event not cause, result in, or contribute to a violation of applicable water-quality standards or effluent limitations due to discharge from underground mines to surface waters;

(6) minimize disturbance to the hydrologic balance of the permit area, prevent material damage outside the permit area, and otherwise eliminate public hazards resulting from underground mining activities; and

(7) meet with the approval of the Mine Safety and Health Administration.

§12.524. Hydrologic Balance: Stream Buffer Zones.

(a) No land within 100 feet of a perennial stream or an intermittent stream shall be disturbed by underground mining activities, unless the Commission specifically authorizes underground mining activities closer to, or through, such a stream. The Commission may authorize such activities only upon finding that:

(1) underground mining activities will not cause or contribute to the violation of applicable state or federal water-quality standards, and will not adversely affect the water quantity and quality or other environmental resources of the stream; and

(2) if there will be a temporary or permanent stream-channel diversion, it will comply with §12.511 of this title (relating to Hydrologic Balance: Diversions).

(b) The area not to be disturbed shall be designated as a buffer zone, and the operator shall mark it as specified in §12.500 of this title (relating to Signs and Markers).

§12.526. Use of Explosives: General Requirements.

(a) (No change.)

(b) Each **operator** [person who conducts underground mining activities] shall comply with all applicable state and federal laws and **regulations** in the use of explosives.

(c) All surface blasting operations incident to underground mining shall be conducted by experienced, trained, and competent persons who understand the hazards involved. **A blaster and at least one other person shall be present at the firing of a blast.** Each person responsible for blasting operations shall possess a valid certification as required by §§12.700-12.710 of this title (relating to Training, Examination, and Certification of Blasters) and:

(1)-(2) (No change.)

(d) Blast-design requirements shall include the following:

(1) the operator shall submit to the Commission an anticipated blast design if blasting operations will be conducted within:

(A) 1,000 feet of any building used as a dwelling, public building, school, church, **hospital, nursing facility,** or community or institutional building outside the permit area; or

(B) 500 feet of **facilities including, but not limited to, disposal wells, petroleum or gas storage facilities,** [an] active or abandoned underground **mines, fluid-transmission pipelines, gas or oil-collection lines, or water and sewage lines** [mine];

(2)-(5) (No change.)

§12.527. Use of Explosives: Pre-Blasting Survey.

(a) At least 30 days before initiation of a blasting program, the operator shall notify, in writing, all residents or owners of dwellings or other structures located within 1/2 mile of **any part of the permit area** [the blasting site] regarding how to request a preblasting survey. The request shall be made, in writing, directly to the operator or to the Commission who shall promptly notify the operator. The operator shall promptly conduct a pre-blasting survey of the dwelling or structure and promptly submit a report of the survey to the Commission and to the person requesting the survey. If a structure is renovated or modified subsequent to a preblast survey, then upon request a survey of such additions and renovations shall be performed by the operator in accordance with this section.

(b)-(d) (No change.)

§12.528. Use of Explosives: Control of Adverse Effects.

(a) General requirements.

(1) (No change.)

(2) Except where lesser distances are approved by the Commission, based upon a pre-blasting survey, seismic investigation, **and an approved blast design submitted in accordance with the requirements of §12.526(d) of this title (relating to Use of Explosives: General Requirements),** [or other appropriate investigation,] blasting shall not be conducted within:

(A) 1,000 feet of any building used as a dwelling, **public building,** school, church, hospital, [or] nursing facility, **or community or institutional building outside the permit area; or** [; and]

(B) 500 feet of facilities including, but not limited to, disposal wells, petroleum or gas storage facilities, **active and abandoned underground mines,** fluid-transmission pipelines, gas or oil-collection lines, or water and sewage lines.

(b)-(e) (No change.)

(f) Airblast.

(1) Limits.

(A) Airblasts shall not exceed the maximum limits specified below at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area, except as provided in subsection (i) [(e)] of this section.

Figure: 16 TAC 12.528(f)(1)(A)

(B) (No change.)

(C) If necessary to prevent damage, the Commission shall specify lower maximum allowable airblast levels than those of **subparagraph (A) of this paragraph** [subsection (f)(1)(A) of this section] for use in the vicinity of a specific blasting operation.

(2) (No change.)

(g) (No change.)

(h) Ground vibration.

(1)General. In all blasting operations, except as otherwise authorized in subsection (h) [(e)] of this section, the maximum ground vibration shall not exceed the values approved by the Commission. The maximum ground vibration for protected structures listed in **paragraph (2)(A) of this subsection** [subsection (d)(2)(A) of this section] shall be established in accordance with the maximum peak-particle-velocity limits of **paragraph (2) of this subsection** [subsection (d)(2) of this section], the scaled-distance equation of **paragraph (3) of this subsection** [subsection (d)(3) of this section], the blasting-level chart of **paragraph (4) of this subsection** [subsection (d)(4) of this section], or by the Commission under **paragraph (5) of this subsection** [subsection (d)(5) of this section]. All structures in the vicinity of the blasting area, not listed in **paragraph (2)(A) of this subsection** [subsection (d)(2)(A) of this section], such as water towers, pipelines and other utilities, tunnels, dams, impoundments, and underground mines, shall be protected from damage by establishment of a maximum allowable limit on ground vibration, submitted by the operator and approved by the Commission.

(2) Maximum peak particle velocity.

(A) The maximum ground vibration shall not exceed the following limits at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area:

Figure: 16 TAC 12.528(h)(2)(A)

(B) (No change.)

(3) Scaled-distance equation.

(A) An operator may use the scaled-distance equation, $W = (D/D_s)^2$, to determine the allowable charge weight of explosives to be detonated in any 8-millisecond period, without seismic monitoring; where W = the maximum weight of explosives, in pounds; D = the distance, in feet, from the blasting site to the nearest protected structure; and D_s = the scaled-distance factor, which may initially be approved by the Commission using the values for the scaled-distance factor listed in **paragraph (2)(A) of this subsection** [subsection (d)(2)(A) of this section].

(B) The development of a modified scaled-distance factor may be authorized by the Commission on receipt of a written request by the operator, supported by seismographic records of blasting at the mine site. The modified scaled-distance factor shall be determined such that the particle velocity of the predicted ground vibration will not exceed the prescribed maximum allowable peak particle velocity of **paragraph (2)(A) of this subsection** [subsection (d)(2)(A) of this section], at a 95-percent confidence level.

(4)-(6) (No change.)

(i)The maximum airblast and ground vibration standards of subsections (f) and (h) [(b) and (d)] of this section shall not apply at the following locations:

(1)-(2) (No change.)

§12.530. Use of Explosives: Records of Blasting Operations.

The operator shall retain a record of each blast, including seismograph reports, which shall be retained for at least 3 years and which shall be available for inspection by the Commission and the public on request. The record shall contain the following data:

(1)-(3) (No change.)

(4) identification, direction, and distance, in feet, from the nearest blast hole to the nearest dwelling, public building, school, church, community or institutional building located outside the permit area, except those described in **§12.528(i)** [§12.528(e)] of this title (relating to Use of Explosives: Control of Adverse Effects);

(5)-(20) (No change.)

§12.531. Disposal of Underground Development Waste and Excess Spoil: General Requirements.

(a)-(c) (No change.)

(d) Slope protection shall be provided to minimize surface erosion at the site. Diversion design shall conform with the requirements of §12.511 of this title (relating to Hydrologic Balance: Diversions [and Conveyance of Overland Flow, Shallow Ground-Water Flow, and Ephemeral Streams]). All disturbed areas, including diversion ditches that are not ripped, shall be vegetated upon completion of construction.

(e)-(k) (No change.)

(l) Coal **mine** [processing] waste shall not be disposed of in valley or head-of-hollow fills and may only be disposed of with underground development waste, or in other excess spoil fills, if such waste is:

(1) placed in accordance with §12.538 of this title (relating to Coal **Mine** [Processing] Waste Banks: Construction Requirements);

(2)-(3) (No change.)

(m)-(q) (No change.)

§12.532. Disposal of Underground Development Waste and Excess Spoil: Valley Fills.

(a)-(b) (No change.)

(c) A sub-drainage system for the fill shall be constructed in accordance with the following:

(1) a system of underdrains constructed of durable rock shall meet the requirements of **paragraph (4) of this subsection** [paragraph (c)(4) of this section], and:

(A)-(C) (No change.)

(2) (No change.)

(3) in constructing the underdrains, no more than 10% of the rock may be less than 12 inches in size and no single rock may be larger than 25% of the width of the drain. Rock used in underdrains shall meet the requirements **paragraph (4) of this subsection** [paragraph (c)(4) of this section]. The minimum size of the main underdrain shall be:

Figure: 16 TAC 12.532(c)(3)

(4) (No change.)

(d) (No change.)

(e) Surface-water runoff from the area above the fill shall be diverted away from the fill and into stabilized diversion channels designed to pass safely the runoff from the 100-year, 24-hour precipitation event, or larger event specified by the Commission. Surface runoff from the fill surface shall be diverted to stabilized channels off the fill which will safely pass runoff from a 100-year,

24-hour precipitation event. Diversion design shall comply with the requirements of **§12.511(6)** [paragraph (6) of §12.511] of this title (relating to Hydrologic Balance: Diversions [and Conveyance of Overland Flow, Shallow Ground-Water Flow, and Ephemeral Streams]).

(f)-(h) (No change.)

§12.533. Disposal of Underground Development Waste and Excess Spoil: Head-of-Hollow Fills.

Disposal of underground development waste and excess spoil in the head-of-hollow fill shall meet all standards set forth in §§12.531 and 12.532 of this title (relating to Disposal of Underground Development Waste and Excess Spoil: General Requirements, and to Disposal of Underground Development Waste and Excess Spoil: Valley Fills) and the additional requirements of this section.

(1) (No change.)

(2) The alternative rock-core chimney drain system shall be designed and incorporated into the construction of head-of-hollow fills as follows:

(A) the fill shall have, along the vertical projection of the main buried stream channel or rill, a vertical core of durable rock at least 16 feet thick which shall extend from the toe of the fill to the head of the fill, and from the base of the fill to the surface of the fill. A system of lateral rock underdrains shall connect this rock core to each area of potential drainage or seepage in the disposal area. Rocks used in the rock core and underdrains shall meet the requirements of **§12.532(2)** [paragraph (2) of §12.532] of this title (relating to Disposal of Underground Development Waste and Excess Spoil: Valley Fills);

(B)-(C) (No change.)

(3) (No change.)

§12.534. Disposal of Underground Development Waste and Excess Spoil: Durable Rock Fills.

(a)-(d) (No change.)

(e) Surface-water runoff from the areas adjacent to and above the fill shall not be allowed to flow onto the fill, and shall be diverted into stabilized channels which are designed to safely pass the runoff from a 100-year, 24-hour precipitation event. Diversion design shall comply with the requirements of **§12.511(6)** [paragraph (6) of §12.511] of this title (relating to Hydrologic Balance: Diversions [and Conveyance of Overland Flow, Shallow Ground-Water Flow, and Ephemeral Streams]).

(f) (No change.)

(g) Surface runoff from the outslope of the fill shall be diverted off the fill to properly designed channels which will safely pass a 100-year, 24-hour precipitation event. Diversion design shall comply with the requirements of **§12.511(6)** [paragraph (6) of §12.511] of this title (relating to Hydrologic Balance: Diversions [and Conveyance of Overland Flow, Shallow Ground-Water Flow, and Ephemeral Streams]).

(h) (No change.)

§12.535. Coal Mine [Processing] Waste Banks: General Requirements.

(a) All coal **mine** [processing] waste shall be hauled or conveyed and placed in new and existing disposal areas approved

by the Commission for this purpose. These areas shall be within a permit area. The disposal area shall be designed, constructed and maintained:

(1) in accordance with §§12.531 and 12.532 of this title (relating to Disposal of Underground Development Waste and Excess Spoil: General Requirements, and to Disposal of Underground Development Waste and Excess Spoil: Valley Fills), this section, and §§12.536-12.541 of this title (relating to Coal **Mine** [Processing] Waste Banks: Site Inspection, to Coal **Mine** [Processing] Waste Banks: Water-Control Measures, to Coal **Mine** [Processing] Waste Banks: Construction Requirements, to Coal **Mine** [Processing] Waste: Burning, to Coal **Mine** [Processing] Waste: Burned-Waste Utilization, and to Coal **Mine** [Processing] Waste: Return to Underground Workings); and

(2) (No change.)

(b) Coal **mine** [processing] waste materials from activities located outside a permit area, such as those activities at other mines or abandoned mine-waste piles, may be disposed of in the permit area only if approved by the Commission. Approval shall be based on a showing by the person who conducts underground mining activities in the permit area, using hydrologic, geologic, geotechnical, physical, and chemical analyses, that disposal of these materials does not:

(1)-(3) (No change.)

(c) **The disposal facility shall be designed using current, prudent engineering practices and shall meet any design criteria established by the Commission. A qualified registered professional engineer experienced in the design of similar earth and waste structures shall certify the design of the disposal facility.**

§12.536. Coal Mine [Processing] Waste Banks: Site Inspection.

(a) All coal **mine** [processing] waste banks shall be inspected, on behalf of the person conducting underground mining activities, by a qualified registered engineer or other person approved by the Commission.

(1) Inspections shall occur at least quarterly, beginning within seven days after preparation of the disposal area begins. The Commission may require more frequent inspections based upon an evaluation of the potential danger to the health or safety of the public and the potential harm to land, air and water resources. Inspections may terminate when the coal **mine** [processing] waste bank has been graded, covered in accordance with §12.538 of this title (relating to Coal **Mine** [Processing] Waste Banks: Construction Requirements), topsoil has been distributed on the bank in accordance with §12.507 of this title (relating to Topsoil: Redistribution), or at such a later time as the Commission may require.

(2)-(4) (No change.)

(b) If any inspection discloses that a potential hazard exists, the Commission shall be informed promptly of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the Commission shall be notified immediately. The Commission shall then notify the appropriate emergency agencies that other emergency procedures are required to protect the public from the coal **mine** [processing] waste area.

§12.537. Coal Mine [Processing] Waste Banks: Water-Control Measures.

(a) A properly designed subdrainage system shall be provided, which shall:

(1)-(2) (No change.)

(3) be covered so as to protect against the entrance of surface water or leachate from the coal **mine** [processing] waste.

(b) All surface drainage from the area above the coal **mine** [processing] waste bank and from the crest and face of the waste disposal area shall be diverted in accordance with §12.532(e) of this title (relating to Disposal of Underground Development Waste and Excess Spoil: Valley Fills).

(c) (No change.)

(d) Discharges of all water from a coal **mine** [processing] waste bank shall comply with §§12.509, 12.510, 12.513, 12.514, 12.519, and 12.522 of this title (relating to Hydrologic Balance: General Requirements, to Hydrologic Balance: Water-Quality Standards and Effluent Limitations, to Hydrologic Balance: Sediment Control Measures, to Hydrologic Balance: **Siltation Structures** [Sedimentation Ponds], to Hydrologic Balance: Surface and Ground-Water Monitoring, and to Hydrologic Balance: Discharge of Water Into an Underground Mine).

§12.538. *Coal **Mine** [Processing] Waste Banks: Construction Requirements.*

(a) Coal **mine** [processing] waste banks shall be constructed in compliance with §§12.531 and 12.532 of this title (relating to Disposal of Underground Development Waste and Excess Spoil: General Requirements, and to Disposal of Underground Development Waste and Excess Spoil: Valley Fills), except to the extent the requirements of those sections are specifically varied in this section.

(b) Coal **mine** [processing] waste banks shall have a minimum static factor of safety of 1.5.

(c) Compaction requirements during construction or modification of all coal **mine** [processing] waste banks shall meet the requirements of this subsection, instead of those specified in §12.532(d) of this title (relating to Disposal of Underground Development Waste and Excess Spoil: Valley Fills). The coal **mine** [processing] waste shall be:

(1) spread in layers no more than 24 inches in thickness; **and**

(2) compacted to attain 90% of the maximum dry density in order to prevent spontaneous combustion and to provide the strength required for stability of the coal processing waste bank. Dry densities shall be determined in accordance with the *American Association of State Highway and Transportation Officials (AASHTO) Specification T99-74 (Twelfth Edition) (July, 1978)* or an equivalent method. AASHTO T99-74 is on file and available for inspection at the Commission office, 1701 N. Congress Avenue, Austin, Texas . [; and]

[(3) variations may be allowed in these requirements for the disposal of dewatered fine-coal waste (minus 28 sieve size) with approval of the Commission.]

(d) Following grading of the coal **mine** [processing] waste bank, the site shall be covered with a minimum of 4 feet of the best available non-toxic and non-combustible material, in accordance with §12.505(e) of this title (relating to Topsoil: Removal), and in a manner that does not impede flow from subdrainage systems. The

coal **mine** [processing] waste bank shall be revegetated in accordance with §§12.555-**12.560** [12.561] of this title (relating to Revegetation: General Requirements, to Revegetation: Use of Introduced Species, to Revegetation: Timing, to Revegetation: Mulching and Other Soil Stabilizing Practices, to Revegetation: Grazing, **and** to Revegetation: Standards for Success [, and to Revegetation: Tree and Shrub Stocking for Forest Land]). The Commission may allow less than 4 feet of cover material based on physical and chemical analyses which show that the requirements of §§12.555- **12.560** [12.561] of this title (relating to Revegetation: General Requirements, to Revegetation: Use of Introduced Species, to Revegetation: Timing, to Revegetation: Mulching and Other Soil Stabilizing Practices, to Revegetation: Grazing, **and** to Revegetation: Standards for Success [, and to Revegetation: Tree and Shrub Stocking for Forest Land]) will be met.

§12.539. *Coal **Mine** [Processing] Waste: Burning.*

Coal **mine** [processing] waste fires shall be extinguished by the person who conducts the underground mining activities in accordance with a plan approved by the Commission and the Mine Safety and Health Administration. The plan shall contain, at a minimum, provisions to ensure that only those persons authorized by the operator, and who have an understanding of the procedure to be used, shall be involved in the extinguishing operations.

§12.540. *Coal **Mine** [Processing] Waste: Burned-Waste Utilization.*

Before any burned coal **mine** [processing] waste or other materials or refuse is removed from a disposal area, approval shall be obtained from the Commission. A plan for the method of removal, with maps and appropriate drawings to illustrate the proposed sequence of the operation and methods of compliance with §§12.500-12.539, this section, and §§12.541-12.572 of this title (relating to Permanent Program Performance Standards – Underground Mining Activities), shall be submitted to the Commission. Consideration shall be given in the plan to potential hazards [,] which may be created by removal, to persons working or living in the vicinity of the structure. The plan shall be certified by a qualified registered professional engineer.

§12.541. *Coal **Mine** [Processing] Waste: Return To Underground Workings.*

Coal **mine** [processing] waste may be returned to underground mine workings only in accordance with the waste disposal program approved by the Commission and MSHA under §12.193 of this title (relating to Underground Development Waste/Return of Coal Processing Waste to Abandoned Underground Workings).

§12.542. *Disposal of Noncoal Wastes.*

(a) (No change.)

(b) Final disposal of noncoal wastes shall be in a designated disposal site in the permit area. Disposal sites shall be designed and constructed with appropriate water barriers on the bottom and sides of the designated site. Wastes shall be routinely compacted and covered to prevent combustion and wind-born waste. When disposal is completed, a minimum of 2 feet of soil cover shall be placed over the site, slopes stabilized, and revegetation accomplished in accordance with §§12.555-**12.560** [12.561] of this title (relating to Revegetation: General Requirements, to Revegetation: Use of Introduced Species, to Revegetation: Timing, to Revegetation: Mulching and Other Soil Stabilizing Practices, to Revegetation: Grazing, **and** to Revegetation: Standards for Success [, and to

Revegetation: Tree and Shrub Stocking for Forest Land]). Operation of the disposal site shall be conducted in accordance with all local, state, and federal requirements.

(c) (No change.)

*§12.543. Coal **Mine** [Processing] Waste: Dams and Embankments: General Requirements.*

(a) This section, and §§12.544 and 12.545 of this title (relating to Coal **Mine** [Processing] Waste: Dams and Embankments: Site Preparation, and to Coal **Mine** [Processing] Waste: Dams and Embankments: Design and Construction) apply to dams and embankments constructed of coal **mine** [processing] waste or intended to impound coal **mine** [processing] waste, whether they were completed before adoption of the Commission regulatory program or are intended to be completed thereafter.

(b) Waste shall not be used in the construction of dams and embankments unless it has been demonstrated to the Commission that the stability of such a structure conforms with the requirements of **§§12.500-12.542, this section, and §§12.544-12.572 of this title (relating to Permanent Program Performance Standards - Underground Mining Activities)** [§12.545(a) of this title (relating to Coal Processing Waste: Dams and Embankments: Design and Construction)]. It shall also be demonstrated that the use of **coal mine** waste material shall not have a detrimental effect on downstream water quality or the environment due to acid seepage through the dam or embankment. **The stability of the structure and the potential impact of acid mine seepage through the impounding structure shall be discussed in detail in the design plan submitted to the Commission in accordance with this chapter (relating to Coal Mining Regulations).** All demonstrations shall be submitted to and approved by the Commission.

(c) **Each impounding structure constructed of coal mine waste or intended to impound coal mine waste shall be designed, constructed and maintained in accordance with this chapter (relating to Coal Mining Regulations). Such structures may not be retained permanently as part of the approved postmining land use.**

(d) **If an impounding structure constructed of coal mine waste or intended to impound coal mine waste meets the criteria of the Mine Safety and Health Administration, 30 CFR 77.216(a), the combination of principal and emergency spillways shall be able to safely pass the probable maximum precipitation of a 6-hour precipitation event, or greater event as specified by the Commission.**

*§12.544. Coal **Mine** [Processing] Waste: Dams and Embankments: Site Preparation.*

Before coal **mine** [processing] waste is placed at a dam or embankment site:

(1) (No change.)

(2) surface drainage that may cause erosion to the embankment area or the embankment features, whether during construction or after completion, shall be diverted away from the embankment by diversion ditches that comply with the requirements of §12.511 of this title (relating to Hydrologic Balance: Diversions [and Conveyance of Overland Flow, Shallow Ground-Water Flow, and Ephemeral Streams]). Adequate outlets for discharge from these diversions shall be in accordance with §12.515 of this title (relating to Hydrologic Balance: Discharge Structures). Diversions that are

designed to divert drainage from the upstream area away from the impoundment area shall be designed to carry the peak runoff from a 100-year, 24-hour precipitation event. The diversion shall be maintained to prevent blockage, and the discharges shall be in accordance with §12.515 of this title (relating to Hydrologic Balance: Discharge Structures). Sediment-control measures shall be provided at the discharge of each diversion ditch before entry into natural watercourses in accordance with §§12.509-**12.511, 12. 513, and** 12.514 of this title (relating to Hydrologic Balance: General Requirements, to Hydrologic Balance: Water-Quality Standards and Effluent Limitations, to Hydrologic Balance: Diversions [and Conveyance of Overland Flow, Shallow Ground-Water Flow, and Ephemeral Streams, to Hydrologic Balance: Stream-Channel Diversions], to Hydrologic Balance: Sediment Control Measures, and to Hydrologic Balance: **Siltation Structures** [Sedimentation Ponds]).

*§12.545. Coal **Mine** [Processing] Waste: Dams and Embankments: Design and Construction.*

(a) The design of each dam and embankment constructed of coal **mine** [processing] waste or intended to impound such waste shall comply with the requirements of **§12.517(a) and (c)** [§§12.517(b)(5) and 12.517(f)-(j)] of this title (relating to Hydrologic Balance: Permanent and Temporary Impoundments), modified as follows:

(1)-(2) (No change.)

(3) the dam or embankment foundation and abutments shall be designed to be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed to determine the safety factors of the dam or embankment for all loading conditions appearing in **paragraph (2) of this subsection** [subsection (a)(2) of this section] or the publications referred to in §12.517 of this title (relating to Hydrologic Balance: Permanent and Temporary Impoundments), and for all increments of construction.

(b) (No change.)

(c) **For an impounding structure** [Dams or embankments] constructed of or impounding **coal mine** waste , [materials shall be designed so that] at least 90% of the water stored during the design precipitation event shall be removed within **the** [a] 10-day period **following the design precipitation event.**

§12.547. Protection of Fish, Wildlife, and Related Environmental Values.

(a)-(d) (No change.)

(e) Each person who conducts underground mining activities shall to the extent possible using the best technology currently available:

(1)-(5) (No change.)

(6) afford protection to aquatic communities by avoiding stream channels as required in §§12.524 and 12.565 of this title (relating to Hydrologic Balance: Stream Buffer Zones, and to Subsidence Control: Buffer Zones) or restoring stream channels as required in **§12.511 of this title (relating to Hydrologic Balance: Diversions)** [§12.512 of this title (relating to Hydrologic Balance: Stream-Channel Diversions)];

(7)-(8) (No change.)

(9) if fish and wildlife habitat is to be a primary or secondary post-mining land use, the operator shall, in addition to

the requirements of §§12.555-**12.560** [12.561] of this title (relating to Revegetation: General Requirements, to Revegetation: Use of Introduced Species, to Revegetation: Timing, to Revegetation: Mulching and Other Soil Stabilizing Practices, to Revegetation: Grazing, **and** to Revegetation: Standards for Success [, and to Revegetation: Tree and Shrub Stocking for Forest Land]):

(A)-(B) (No change.)

(10) where cropland is to be the [alternative] postmining land use **and where appropriate for wildlife and** [on lands diverted from a fish and wildlife premining land use,] crop management practices, intersperse the fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals; and

(11) (No change.)

§12.552. Backfilling and Grading: General Grading Requirements.

(a) (No change.)

(b) On approval by the Commission and in order to conserve soil moisture, ensure stability, and control erosion on final graded slopes, cut-and-fill terraces may be allowed, if the terraces are compatible with the approved postmining land use and are appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces shall meet the following requirements:

(1)-(2) (No change.)

(3) the slope of the terrace outslope shall not exceed 2h:1v (50%). [Outslopes which exceed 2h:1v (50%) may be approved if they have a minimum static safety factor of more than 1.3, provide adequate control over erosion, and closely resemble the surface configuration of the land prior to mining.] In no case may highwalls be left as part of terraces; and

(4) (No change.)

(c)-(d) (No change.)

§12.554. Regrading or Stabilizing Rills and Gullies.

When rills or gullies deeper than 9 inches form in areas that have been regraded and topsoiled, the rills and gullies shall be filled, graded, or otherwise stabilized and the area reseeded or replanted according to §§12.555-**12.560** [12.561] of this title (relating to Revegetation: General Requirements, to Revegetation: Use of Introduced Species, to Revegetation: Timing, to Revegetation: Mulching and Other Soil Stabilizing Practices, to Revegetation: Grazing, **and** to Revegetation: Standards for Success [, and to Revegetation: Tree and Shrub Stocking for Forest Land]). The Commission shall specify that rills or gullies of lesser size be stabilized, and the area reseeded or replanted if the rills or gullies are disruptive to the approved postmining land use or may result in additional erosion and sedimentation.

§12.555. Revegetation: General Requirements.

(a) The permittee shall establish on regraded areas and on all other disturbed areas except water areas and surface areas of roads that are approved as part of the postmining land use, a vegetative cover that is in accordance with the approved permit and reclamation plan and that is:

(1) diverse, effective, and permanent;

(2) comprised of species native to the area, or of introduced species where desirable and necessary to achieve the approved postmining land use and approved by the Commission;

(3) at least equal in extent of cover to the natural vegetation of the area; and

(4) capable of stabilizing the soil surface from erosion.

(b) The reestablished plant species shall:

(1) be compatible with the approved postmining land use;

(2) have the same seasonal characteristics of growth as the original vegetation;

(3) be capable of self-regeneration and plant succession;

(4) be compatible with the plant and animal species of the area; and

(5) meet the requirements of applicable state and federal seed, poisonous and noxious plant, and introduced species laws or regulations.

(c) The Commission may grant exception to the requirements of subsections (b)(2) and (b)(3) of this section when the species are necessary to achieve a quick-growing, temporary, stabilizing cover, and measures to establish permanent vegetation are included in the approved permit and reclamation plan.

(d) When the Commission approves a cropland postmining land use, the Commission may grant exceptions to the requirements of subsections (a)(1), (a)(3), (b)(2), and (b)(3) of this section. The requirements of §§12.620-12.625 of this title (relating to Special Permanent Program Performance Standards - Operations on Prime Farmland) apply to areas identified as prime farmland.

§12.560. Revegetation: Standards For Success.

(a) Comparison to an established standard. Success of revegetation shall be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in natural vegetation of the area, and the general requirements of §§12.555 and 12.556 of this title (relating to Revegetation: General Requirements, and to Revegetation: Use of Introduced Species).

(1) Standards for success and statistically valid sampling techniques for measuring success shall be selected by the Commission.

(2) Standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90% of the success standard. The sampling techniques for measuring success shall use a 90-percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error).

(b) Ground cover and productivity standards. Standards for success shall be applied in accordance with the approved postmining land use and, at a minimum, the following conditions:

(1) for areas developed for use as grazingland or pastureland, the ground cover and production of living plants on the revegetated area shall be at least equal to that of a reference area or such other success standards approved by the Commission;

(2) for areas developed for use as cropland, crop production on the revegetated area shall be at least equal to that of a reference area or such other success standards approved by the Commission;

(3) for areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products, success of vegetation shall be determined on the basis of tree and shrub stocking and vegetative ground cover. Such parameters are described as follows:

(A) minimum stocking and planting arrangements shall be specified by the Commission on the basis of local and regional conditions and after consultation with and approval by the state agencies responsible for the administration of forestry and wildlife programs;

(B) trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved postmining land use. Trees and shrubs counted in determining such success shall be healthy and have been in place for not less than two growing seasons. At the time of bond release, at least 80% of the trees and shrubs used to determine such success shall have been in place for 60% of the applicable minimum period of responsibility; and

(C) vegetative ground cover shall not be less than that required to achieve the approved postmining land use;

(4) for areas to be developed for industrial/commercial or residential land use less than two years after regrading is completed, the vegetative ground cover shall not be less than that required to control erosion; and

(5) for areas previously disturbed by mining that were not reclaimed to the requirements of this subchapter (relating to Permanent Program Performance Standards) and that are mined or otherwise redisturbed by surface coal mining operations, as a minimum, the vegetative ground cover shall be not less than the ground cover existing before redisturbance and shall be adequate to control erosion.

(c) Maintenance and data collection.

(1) The period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the Commission in accordance with paragraph (4) of this subsection.

(2) In areas of more than 26.0 inches of annual average precipitation, the period of responsibility shall continue for a period of not less than five full years. Vegetation parameters identified in subsection (b) of this section for grazingland or pastureland and cropland shall equal or exceed the approved success standard during the growing seasons of any two years of the responsibility period, except the first year. Areas approved for the other land uses identified in subsection (b) of this section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

(3) In areas of 26.0 inches or less average annual precipitation, the period of responsibility shall continue for a period of not less than 10 full years. Vegetation parameters identified in subsection (b) of this section shall equal or exceed the approved success standard for at least the last 2 consecutive years of the responsibility period.

(4) The Commission may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, provided it obtains prior approval from the Director in accordance with 30 CFR 732.17 that the practices are normal husbandry practices,

without extending the period of responsibility for revegetation success and bond liability if such practices can be expected to continue as part of the postmining land use or if the discontinuance of the practices will not reduce the probability of permanent revegetation success. Approved practices shall be normal husbandry practices within the region for unmined land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding, and transplanting, specifically necessary by such actions.

§12.569. *Roads: General.*

(a)-(c) (No change.)

(d) Location.

(1) No part of any road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the Commission in accordance with applicable §§12.509-**12.511**, and §§**12.513**-12.524 of this title (relating to Hydrologic Balance: General Requirements, to Hydrologic Balance: Water-Quality Standards and Effluent Limitations, to Hydrologic Balance: Diversions [and Conveyance of Overland Flow, Shallow Ground-Water Flow, and Ephemeral Streams, to Hydrologic Balance: Stream-Channel Diversions], to Hydrologic Balance: Sediment Control Measures, to Hydrologic Balance: **Siltation Structures** [Sedimentation Ponds], to Hydrologic Balance: Discharge Structures, to Hydrologic Balance: Acid-Forming and Toxic-Forming Materials, to Hydrologic Balance: Permanent and Temporary Impoundments, to Hydrologic Balance: Underground Mine Entry and Access Discharges, to Hydrologic Balance: Surface- and Ground-Water Monitoring, to Hydrologic Balance: Transfer of Wells, to Hydrologic Balance: Water Rights and Replacement, to Hydrologic Balance: Discharge of Water Into an Underground Mine, to Hydrologic Balance: Postmining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities, and to Hydrologic Balance: Stream Buffer Zones).

(2) (No change.)

(e) (No change.)

(f) Reclamation. A road not to be retained under an approved postmining land use shall be reclaimed in accordance with the approved reclamation plan as soon as practicable after it is no longer needed for mining and reclamation operations. This reclamation shall include:

(1)-(5) (No change.)

(6) scarifying or ripping the roadbed, replacing topsoil or substitute material and revegetating disturbed surfaces in accordance with §§12.504-12.508 of this title (relating to Topsoil: General Requirements, to Topsoil: Removal, to Topsoil: Storage, to Topsoil: Redistribution, and to Topsoil: Nutrients and Soil Amendments), and §§12.555- **12.560** [12.561] of this title (relating to Revegetation: General Requirements, to Revegetation: Use of Introduced Species, to Revegetation: Timing, to Revegetation: Mulching and Other Soil Stabilizing Practices, to Revegetation: Grazing, and to Revegetation: Standards for Success [, and to Revegetation: Tree and Shrub Stocking for Forest Land]).

§12.570. *Primary Roads.*

Primary roads shall meet the requirements of §12.569 of this title (relating to Roads: General) and the additional requirements of this section.

(1)-(3) (No change.)

(4) Drainage control. In accordance with the approved plan:

(A)-(D) (No change.)

(E) natural stream channels shall not be altered or relocated without the prior approval of the Commission in accordance with applicable §§12.509-**12.511**, and §§**12.513-12.524** of this title (relating to Hydrologic Balance: General Requirements, to Hydrologic Balance: Water-Quality Standards and Effluent Limitations, to Hydrologic Balance: Diversions [and Conveyance of Overland Flow, Shallow Ground-Water Flow, and Ephemeral Streams, to Hydrologic Balance: Stream-Channel Diversions], to Hydrologic Balance: Sediment Control Measures, to Hydrologic Balance: **Siltation Structures** [Sedimentation Ponds], to Hydrologic Balance: Discharge Structures, to Hydrologic Balance: Acid-Forming and Toxic-Forming Materials, to Hydrologic Balance: Permanent and Temporary Impoundments, to Hydrologic Balance: Underground Mine Entry and Access Discharges, to Hydrologic Balance: Surface- and Ground-Water Monitoring, to Hydrologic Balance: Transfer of Wells, to Hydrologic Balance: Water Rights and Replacement, to Hydrologic Balance: Discharge of Water Into an Underground Mine, to Hydrologic Balance: Postmining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities, and to Hydrologic Balance: Stream Buffer Zones); and

(F) (No change.)

(5) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on July 25, 1997.

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Mary Ross McDonald

Deputy General Counsel, Office of General Counsel

Railroad Commission of Texas

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For further information, please call: (512) 463-7008



Subchapter G. Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Procedures System

Permanent Program Performance Standards-Underground Mining Activities

16 TAC §§12.510-12.512, 12.514, 12.517, 12.519, 12.522, 12.524, 12.555, 12.560, 12.561

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the proposed repeals:

§12.510. *Hydrologic Balance: Water-Quality Standards and Effluent Limitations.*

§12.511. *Hydrologic Balance: Diversions and Conveyance of Overland Flow and Shallow Ground Water Flow, and Ephemeral Streams.*

§12.512. *Hydrologic Balance: Stream-Channel Diversions.*

§12.514. *Hydrologic Balance: Sedimentation Ponds.*

§12.517. *Hydrologic Balance: Permanent and Temporary Impoundments.*

§12.519. *Hydrologic Balance: Surface and Ground-Water Monitoring.*

§12.522. *Hydrologic Balance: Discharge of Water Into an Underground Mine.*

§12.524. *Hydrologic Balance: Stream Buffer Zones.*

§12.555. *Revegetation: General Requirements.*

§12.560. *Revegetation: Standards For Success.*

§12.561. *Revegetation: Tree and Shrub Stocking For Forest Land.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Deputy General Counsel, Office of General Counsel

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Subchapter K. Permanent Program Performance Standards

Special Permanent Program Performance Standards - Coal Processing Plants and Support Facilities Not Located At or Near the Minesite or Not Within the Permit Area for a Mine

16 TAC §12.651

The amendment is proposed under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the proposed new sections and amendments:

§12.651. *Coal Processing Plants: Performance Standards.*

Construction, operation, maintenance, modification, reclamation, and removal activities at operations covered by §12.650 of this title (relating to Applicability) and this section shall comply with the following:

(1)-(2) (No change.)

(3) any stream or channel realignment shall comply with **§12.341 of this title (relating to Hydrologic Balance: Diversions)** [§12.342 of this title (relating to Hydrologic Balance: Stream-Channel Diversions)];

(4) if required by the Commission any disturbed area related to the coal processing plant or associated facilities shall have sediment control structures, in compliance with §§12.343 and 12.344 of this title (relating to Hydrologic Balance: Sediment Control Measures, and to Hydrologic Balance: **Siltation Structures** [Sedimentation Ponds]), and all discharges from these areas shall meet the requirements of §§12.339-**12.341** [12.342] of this title (relating to Hydrologic Balance: General Requirements, to Hydrologic Balance: Water-Quality Standards and Effluent Limitations, **and** to Hydrologic Balance: Diversions [and Conveyance of Overland Flow and Shallow Ground-Water Flow, and Ephemeral Streams, and to Hydrologic Balance: Stream-Channel Diversions]), and any other applicable state or federal law;

(5) permanent impoundments associated with coal processing plants shall meet the requirements of §§12.347 and 12.354 of this title (relating to Hydrologic Balance: Permanent and Temporary Impoundments, and to Hydrologic Balance: Postmining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities). Dams constructed of or impounding coal **mine** [processing] waste shall comply with §§12.376-12.378 of this title (relating to Coal **Mine** [Processing] Waste: Dams and Embankments: General Requirements, to Coal **Mine** [Processing] Waste: Dams and Embankments: Site Preparation, and to Coal **Mine** [Processing] Waste: Dams and Embankments: Design and Construction);

(6)-(12) (No change.)

(13) reclamation shall include proper topsoil-handling procedures, revegetation, and abandonment, in accordance with §12.354 of this title (relating to Hydrologic Balance: Postmining Rehabilitation of Sedimentation Ponds), §§12.383-12.389 of this title (relating to Contemporaneous Reclamation, to Backfilling and Grading: General Requirements, to Backfilling and Grading: Covering Coal and Acid- and Toxic-Forming Materials, to Backfilling and Grading: Thin Overburden, to Backfilling and Grading: thick Overburden, to Regrading or Stabilizing Rills and Gullies), §§12.390-12.393 [,] **and** 12.395 [, and 12.396] of this title (relating to Revegetation: General Requirements, to Revegetation: Use of Introduced Species, to Revegetation: Timing, to Revegetation: Mulching and Other Stabilizing Practices, **and to** Revegetation: Standards for Success [, and to Revegetation: Tree and Shrub Stocking for Forest Land]) and §§12.397-12.399 of this title (relating to Cessation of Operations: Temporary, to Cessation of Operations: Permanent, and to Postmining Land Use);

(14)-(15) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on July 25, 1997.

TRD-9709707

Mary Ross McDonald

Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas

Earliest possible date of adoption: September 8, 1997

For further information, please call: (512) 463-7008



Special Permanent Program Performance Standards - In Situ Processing

16 TAC §12.660, §12.661

The amendment is proposed under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the proposed new sections and amendments:

§12.660. In Situ Processing: Performance Standards.

(a)-(d) (No change.)

(e) Each person who conducts in situ-processing activities shall restore the quality of affected ground water in the **permit** [mine plan] and adjacent area, including ground water above and below the production zone, to the approximate premining levels or better, to ensure that the potential for use of the ground water is not diminished.

§12.661. In Situ Processing: Monitoring.

(a) Each person who conducts in situ-processing activities shall monitor the quality and quantity of surface and ground water and the subsurface flow and storage characteristics, in a manner approved by the Commission under §12.519 of this title (relating to Hydrologic Balance: Surface and Ground-Water Monitoring), to measure changes in the quantity and quality of water in surface- and ground-water systems in the **permit** [mine plan] and adjacent areas.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Mary Ross McDonald

Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas

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For further information, please call: (512) 463-7008



Subchapter L. Permanent Program Inspection and Enforcement Procedures

Individual Civil Penalties

16 TAC §12.698

The amendment is proposed under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the proposed new sections and amendments:

§12.698. Procedure For Assessment of Civil Individual Penalty.

(a)-(b) (No change.)

(c) **Service.** For purposes of this section, service shall be performed on the individual to be assessed an individual civil penalty by certified mail, or by any alternative means consistent with the rules governing service of a summons and complaint under Texas Rules of Civil Procedure 21a. Service shall be complete upon tender of the notice of proposed assessment and included information or of the certified mail and shall not be deemed incomplete because of refusal to accept.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Mary Ross McDonald

Deputy General Counsel, Office of General Counsel

Railroad Commission of Texas

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For further information, please call: (512) 463-7008



Subchapter M. Training

Training, Examination, and Certification of Blasters 16 TAC §§12.702-12.704, 12.706

The amendments are proposed under §134.013 of the Texas Natural Resources Code, which authorizes the commission to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the proposed new sections and amendments:

§12.702. General Requirements.

To qualify for blaster certification by the Commission, a person must satisfy the following requirements:

(1)-(4) (No change.)

[(5) Equivalent training. For the purposes of §12.700, this section, and §§12.703-12.710 of this title (relating to Training, Examination, and Certification of Blasters) the Commission may consider equivalent blaster experience and on-the-job training.]

§12.703. Training.

(a) (No change.)

(b) Training Course.

(1) Except as provided in §12.706 of this title (relating to Examination) for reexamination, each applicant for the issuance of a Commission Blaster Certificate shall, within two years prior to application, have completed a training course as follows:

(A) for certificate issuance, the course shall cover the technical aspects of blasting operations and state and federal laws governing the **storage, use and transportation** of explosives, including the topics specified in §12.704 of this title (relating to Training Courses); or

(B) (No change.)

(2) (No change.)

§12.704. Training Courses.

(a) (No change.)

(b) For the purposes of §§12.700, 12.702, and 12.703, this section, and §§12.705-12.710 of this title (relating to Training, Examination, and Certification of Blasters), the Commission may recognize pertinent training courses provided by other qualified jurisdictions or by accredited agencies or schools. **These training courses must provide and require completion of the subjects listed in subsection (a) of this section.**

§12.706. Examination.

(a) Each applicant for the issuance or reissuance of a Commission Blaster Certificate shall pass a written examination of the technical aspects of blasting operations and state and federal laws and regulations governing the **storage, use, and transportation** of explosives.

(1)-(2) (No change.)

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on July 25, 1997.

TRD-9709710

Mary Ross McDonald

Deputy General Counsel, Office of General Counsel

Railroad Commission of Texas

Earliest possible date of adoption: September 8, 1997

For further information, please call: (512) 463-7008



TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 217. Milk and Dairy

Fees

25 TAC §217.81

The Texas Department of Health (department) proposes an amendment to §217.81, concerning milk and milk product fees. House Bill 1875, 75th Legislature, 1997, amended Health and Safety Code, Chapter 435, effective September 1, 1997, to increase the inspection fee from \$.01 to \$.02 per hundredweight for milk and milk products offered for sale in the State of Texas, whether produced in Texas or imported into Texas.

James W. Littlefield, Director, Milk and Dairy Products Division, has determined that for the first five-year period the section is in effect, there will be fiscal implications as a result of enforcing or administering the section as proposed. The effect on state government will be an estimated increase in revenue to the state of approximately \$420,000 per year as a result of the proposed inspection fee increase. This revenue will be used by the department to fund increased costs of laboratory services for the milk and milk products regulatory program. There will be fiscal implications to those local governments receiving increased funding from the department for laboratory analysis of

milk and milk product samples. It is estimated that the increase in revenue to the state will be used to offset the increased costs of laboratory services incurred by local governments.

Mr. Littlefield has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be better assurance that Grade "A" milk offered for sale within the State of Texas will be of higher quality and offer a greater margin for safety from milkborne diseases. The anticipated cost to small businesses or persons will be the increased inspection fee from \$.01 to \$.02 per hundredweight for milk and milk products. There will be no anticipated impact on local employment.

Comments on the proposal may be submitted to James W. Littlefield, Director, Milk and Dairy Products Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 719-0260. Comments will be accepted for 30 days from the date of publication of this proposal in the *Texas Register*.

The amendment is proposed under the Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The amendment affects the Health and Safety Code, Chapter 435.

§§217.81. *Milk and Milk Product Fees.*

(a)- (d) (No change.)

(e) Inspection fees.

(1) All milk or milk products processed, manufactured, or bottled by milk plants located in the State of Texas and offered for sale within the State of Texas shall be assessed a **\$.02** [\$.01] per hundredweight inspectional fee. This fee shall be assessed on a monthly, quarterly, semi-annual or annual basis. The milk plants shall submit monthly production data to the Texas Department of Health no later than 15 days after the end of each reporting month as designated by the department accompanied by the remittance fee required by this subsection. These reports shall be maintained by the Texas Department of Health for a five-year period. Also, each milk plant is required to furnish, upon request from the department, production records for the preceding three years for auditing purposes. This fee shall be considered delinquent if it is not received by the Texas Department of Health 30 days after the end of the reporting period designated by the department.

(2) All milk or milk products processed, manufactured, or bottled by milk plants located outside the legal boundaries of the State of Texas that export milk into the State of Texas for sale or distribution shall be assessed a **\$.02** [\$.01] per hundredweight inspectional fee. Also, the actual cost of analyzing samples of milk and milk products shall be assessed these out-of-state milk plants. This fee shall be assessed on a monthly, quarterly, semi-annual or annual basis. The milk plants shall submit monthly production data to the Texas Department of Health no later than 15 days after the end of each reporting period as designated by the department accompanied by the required remittance fee. These reports shall be maintained by the Texas Department of Health for a five-year period. Also, each plant will be required to furnish, upon request, production records for the preceding three years for auditing purposes. This fee shall be

considered delinquent if it is not received by the Texas Department of Health 30 days after the end of the reporting period designated by the department.

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on July 29, 1997.

TRD-9709824

Susan K. Steeg

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: September 8, 1997

For further information, please call: (512) 458-7236

TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 5. Property and Casualty Insurance

Subchapter F. Inland Marine Insurance

Definition and Classification of Inland Marine Insurance

28 TAC §5.5002

The Texas Department of Insurance proposes an amendment to §5.5002, relating to inland marine insurance. The amendment is necessary to provide that installment sales, leased property, and deferred payment policies are classes of inland marine insurance for which rules, rates, and forms must be filed with the department for approval. The amendment clarifies that credit property insurance policies extending such coverage shall be limited to coverage only for "durable personal property," and provides a definition for that term. The amendment provides that premium calculation be based on price or original debt amount for each item of insured property and prohibits premium calculations based on amounts paid for services, meals, entertainment, nondurable property, finance/service charges, loan interest, delivery charges, or other insurance premiums. The amendment provides for a clear statement about how payments are to be allocated and applied under an agreement for which a policy provides credit property coverage.

Lyndon Anderson, associate commissioner for property and casualty at the Texas Department of Insurance, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal impact to the state or local units of government as a result of enforcing or administering the section. Mr. Anderson also has determined there will be no other implications for the local economy and no impact on local employment as a result of administering the proposed amendment.

Mr. Anderson also has determined that for each year of the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing or administering

the proposed amendment will be credit property insurance availability at rates which are fair, reasonable, not excessive, and more competitive than those resulting under the current regulation. An additional benefit is the assurance that under the amended section consumers will be purchasing credit insurance only on property considered to be insurable, and therefore appropriate subject matter for insurance coverage. Mr. Anderson also has determined that for the first year the proposed amendment is in effect, the cost to each insurer complying with the amended rule will be between \$1,000 and \$5,000, depending on the compliance efficiency of the insurer in developing and making its rate and form filings. The cost in the second through fifth years should not vary materially from the first-year cost of compliance.

There is no anticipated difference in cost of compliance between small and large businesses resulting from the proposed amendment to the section.

Comments on the proposal may be submitted to the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104, Mail Code 113-2A, within 30 days following the date of this publication. An additional copy of comments should be submitted to Lyndon Anderson, Deputy Commissioner, Property Division, P.O. Box 149104, MC #103-1A, Austin, Texas 78714-9104. A request for a public hearing on the proposed amendment should be submitted separately to the Office of the Chief Clerk.

The amendment to §5.5002(5)(Q) is proposed pursuant to the Insurance Code, Article 5.53. Article 5.53 authorizes the commissioner to adopt a definition and classes of inland marine insurance.

The proposed amendment affects regulation pursuant to the following statutes: Insurance Code, Article 5.53

§5.5002. *Texas Definition of Inland Marine Insurance.*

Inland marine insurance is defined and classified as follows.

(1)-(4) (No change.)

(5) Other inland marine risks.

(A)-(P) (No change.)

(Q) Installment sales, leased property, and deferred payment policies **(filed)** [(non-regulated)] . **The credit property insurance coverage addressed in this subparagraph covers** [Covering] the interest of a vendor[,] or mortgagee[,] [and lessor] in property sold under **an** installment sales contract, **or** a partial or deferred payment contract;[,] **and the interest of a lessor in property** [or] leased.

(i) Policies extending the coverage addressed in this subparagraph shall be limited to coverage only for durable personal property. For purposes of this subparagraph, "durable personal property" shall mean consumer goods designed to be used repeatedly and over an extended time period.

(I) Premium calculations for coverage under this subparagraph shall be based on the lower of the purchase price or original debt amount for each item of insured property.

(II) Premium calculations may not be based on amounts paid for services, meals, entertainment, any non-durable property items, finance or service fees, loan interest,

delivery charges, or other insurance premiums (egs., credit life, credit disability or credit unemployment).

(ii) Such policies must include coverage while in transit and may be extended to include the interest of the vendee, mortgagor, or lessee, **if the vendee, mortgagor, or lessee has no other coverage on the durable personal property through existing policies of insurance owned and controlled by the vendee, mortgagor or lessee and procured through an insurance company authorized to transact business in Texas.** In [but in] no event shall the policy cover beyond termination of the vendor's, mortgagee's, or lessor's interest.

(iii) Policies or certificates extending coverage under an installment sales agreement, or partial or deferred payment agreement shall include a clear statement to the consumer complying with federal lending disclosure requirements about how payments under the agreement are allocated among the following:

(I) unpaid late fees,

(II) returned check fees,

(III) unpaid insurance premiums,

(IV) unpaid finance charges, and

(V) unpaid purchases.

(-a-) The required statement shall indicate that payments are applied to unpaid purchases on the basis of age, oldest purchases first.

(-b-) The statement shall further indicate that if more than one item was purchased the same day, payment will be applied to pay off the lowest priced item first.

(R)-(OO) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on July 30, 1997.

TRD-9709875

Caroline Scott

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: September 8, 1997

For further information, please call: (512) 463-6327

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Chapter 21. Trade Practices

Subchapter B. Insurance Advertising, Certain Trade Practices, and Solicitation

28 TAC §21.113

The Texas Department of Insurance proposes an amendment to §21.113, concerning rules pertaining specifically to accident and health insurance advertising and health maintenance organization advertising. The proposed amendment is necessary to implement the provisions of S.B. 682, 75th Legislature, Regular Session, which adds Article 21.20-2 to the Insurance Code, addressing advertisements for certain health benefit plans. The

proposed amendment provides that subject to Article 21.21 a health benefit plan advertisement may include rate information without including information about all exclusions and limitations, so long as the advertisement prominently indicates that the rates are illustrative, that a person should not send money to the issuer in response to the advertisement, that a person must complete an application for coverage in order to obtain coverage, and that certain exclusions and limitations may apply to the plan. The amendment further provides that the advertisement must indicate the age, gender and geographic location on which any premium rate mentioned in the advertisement is based. The proposed amendment also makes miscellaneous editorial and clarifying changes to certain subsections of §21.113.

Audrey Selden, associate commissioner for the consumer protection division of the Texas Department of Insurance, has determined that for each year of the first five years the section is in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the section. Ms. Selden also has determined that there will be no effect on local employment or the local economy.

Audrey Selden, associate commissioner for the consumer protection division of the Texas Department of Insurance, has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administration and enforcement of the amendment will be an advertising rule which implements the provisions of the Insurance Code, Article 21.20-2, relating to advertisements for certain health benefit plans. There is no anticipated difference in cost of compliance between small and large businesses, or between business entities and natural persons resulting from the proposed amendment. There is no anticipated economic cost resulting from the proposed amendment section to persons who are subject to the proposed amendment.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to Caroline Scott, General Counsel and Chief Clerk, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Audrey Selden, Associate Commissioner for Consumer Protection, P.O. Box 149104, MC 111-1A, Austin, Texas 78714-9104. A request for public hearing on the proposed sections should be submitted separately to the Office of the Chief Clerk.

The amendment is proposed pursuant to the Insurance Code, Article 21.21, §13. Article 21.21, §13, provides that the department is authorized to promulgate and enforce reasonable rules and regulations and order such provision as is necessary in the accomplishment of the purposes of Article 21.21, relating to unfair competition and unfair practices.

The proposed new section affects regulation pursuant to the following statutes: Insurance Code, Article 21.20-2 and Article 21.21

§21.113. . *Rules Pertaining Specifically to Accident and Health Insurance Advertising and Health Maintenance Organization Advertising.*

(a) "Invitation to inquire" for the purpose of these sections means an advertisement that has as its objective the creation of a desire to inquire further about the product, and that is limited to a

brief description of the loss for which the benefit is payable. [and may contain:]

(1) **An invitation to inquire may contain:**

(A) the dollar amount of benefit payable; and/or

(B) [(2)] the period of time during which the benefit is payable, provided the advertisement does not refer to cost, **except as permitted by the Insurance Code, Article 21.20-2 and paragraph (3) of this subsection.** [;]

(2) [(3)] **An invitation to inquire** [an advertisement] that specifies either the dollar amount of benefit payable or the period of time during which the benefit is payable shall contain a provision in effect as follows: "For **specific** costs and further details of the coverage, including exclusions, any reductions or limitations and the terms under which the policy may be continued in force, see your agent or write to the company."

(3) **Subject to the Insurance Code, Article 21.20-2, Sec. 1, and Article 21.21, an invitation to inquire concerning a health benefit plan may include rate information without including information about all benefit exclusions and limitations so long as the advertisement includes prominent disclaimers clearly indicating that :**

(A) **the rates are illustrative only;**

(B) **a person should not send money to the issuer of the health benefit plan in response to the advertisement;**

(C) **a person cannot obtain coverage under the health benefit plan until the person completes an application for coverage; and**

(D) **benefit exclusions and limitations may apply to the health benefit plan.**

(4) **Any rate mentioned in any advertisement disseminated under paragraph (3) of this subsection shall indicate the age, gender, and geographic location on which that rate is based.**

(b)-(c) (No change.)

(d) Description of benefits.

(1) **An** [If an advertisement that is an] invitation to contract **referring** [refers] to a dollar amount, **a** period of time for which a benefit is payable, **the** cost of **the** policy, or **a** specific policy benefit or the loss for which such benefit is payable [it] shall also disclose those exclusions, reductions, and limitations affecting the basic provisions of the policy, without which the advertisement would have the capacity and tendency to mislead or deceive.

(2)-(8) (No change.)

(9) When a choice of the amount of benefits is referred to in an advertisement [that is an invitation to contract], it shall disclose that the amount of benefits provided depends upon the plan selected and that the premium will vary with the amount of benefits.

(10)-(20) (No change.)

(e)-(l) (No change.)

[(m) Guidelines published by the National Association of Insurance Commissioners to aid in interpreting the "NAIC Model Rules Governing Advertisements of Accident and Sickness Insurance as Amended with Interpretive Guidelines," are informative but

necessarily are not required guides to apply or to be used per se in applying §§21.103-21.112 of this title (relating to Required Form and Content of Advertisements; Requirement of Identification of Policy of Insurer; Premiums; Description of Benefits, Coverage, and Policy Provisions; Testimonials, Appraisals, or Analyses; Use of Statistics; Unlawful Inducement; Disparagements; Comparisons; and General Prohibition, respectively); and this section. The interpretive guidelines do not have the status of rules. They may be looked to as advisory only in determining the intent, meaning, and requirements of §§21.103-21.112 of this title (relating to Required Form and Content of Advertisements; Requirement of Identification of Policy of Insurer; Description of Benefits, Coverage, and Policy Provisions; Premiums; Testimonials, Appraisals, and Analyses; Use of Statistics; Unlawful Inducement; Disparagements; Comparisons; and General Prohibition, respectively); and this section, as such sections are applied to accident and health insurance. (Note: As an accommodation by the State Board of Insurance, the NAIC guidelines as they become available may be obtained by request of the Advertising Section, Market Conduct Division (016-7), State Board of Insurance, P.O. Box 149091, Austin, Texas 78714-9091).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on July 30, 1997.

TRD-9709876

Caroline Scott

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: September 8, 1997

For further information, please call: (512) 463-6327

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 55. Request for Contested Case Hearings; Public Comment

Subchapter B. Hearings Requests, Public Comment

30 TAC §55.25

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §55.25, concerning Public Comment Processing. The purpose of the proposed action is to establish a system for the commission's consideration of and response to public comments on applications and draft permits for federally authorized underground injection control (UIC), Texas Pollutant Discharge Elimination System (TPDES), and Resource Conservation and Recovery Act (RCRA) permit programs.

EXPLANATION OF THE PROPOSED RULE. The proposed amendment adds a new subsection (b) to §55.25, which provides for consideration of and written response to public comments by the decision maker on permitting actions in

the UIC and RCRA programs, and in the TPDES program upon delegation. The amendment provides procedures for the content and timing of commission responses. It also authorizes the executive director to call and conduct public meetings in response to public comment and provides requirements governing those hearings.

FISCAL NOTE. Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the section is in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the section.

PUBLIC BENEFIT. Mr. Minick also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be enhanced public input on certain federally authorized permit programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

TAKINGS IMPACT ASSESSMENT. The commission has prepared a Takings Impact Assessment for this rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rule is to establish a system for the commission's consideration of and response to public comments on applications and draft permits for certain federally authorized permit programs. The rule will substantially advance these specific purposes by providing specific provisions on these matters. Promulgation and enforcement of this rule will not burden private real property which is the subject of the rule because it concerns commission procedural rules. The following exceptions to the application of Texas Government Code, Chapter 2007, apply to this rule: the action fulfills an obligation mandated by federal law, advances the health and safety purpose, and imposes no greater burden than is necessary to achieve the health and safety purpose.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW. The executive director has reviewed the proposed rule-making and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, nor will affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rule is not subject to the CMP.

PUBLIC HEARING. A public hearing on this proposal will be held September 8, 1997, at 2:00 p.m., in Room 2210 of Texas Natural Resource Conservation Commission (TNRCC) Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS. Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments should

reference Rule Log Number 97159-080-AD. Comments must be received by 5:00 p.m., September 8, 1997. For further information, please contact Brian Christian, Policy Research Division, (512) 239-1760.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY. The amendment is proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendment implements Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412.

§55.25. . *Public Comment Processing.*

(a) (No change.)

(b) This subsection applies to applications concerning hazardous waste facilities, underground injection wells, or Texas Pollutant Discharge Elimination System (TPDES) permits. It applies to an application only when the commission has federal authorization to manage the permitting program under which the application is evaluated.

(1) Before an application is approved, the executive director shall prepare a response to all significant public comment on the draft permit raised during the public comment period. The response shall specify the provisions of the draft permit that have been changed in response to public comment and the reasons for the changes. The executive director shall make the response available to the public.

(A) If the application is acted on by the commission under §50.13 of this title (relating to Action on Application) or §55.27(a)(1) of this title (relating to Commission Action on Hearing Request), the executive director's response to public comment shall be made available to the public and filed with the chief clerk at least ten days before the commission acts on the application. The commission shall consider all public comment in making its decision and shall either adopt the executive director's response to public comment or prepare its own response.

(B) If the application is approved by the executive director under Chapter 50, Subchapter C of this title (relating to Action by the Executive Director), the response to public comment should be made no later than the time of the executive director's action on the application.

(2) The executive director may call and conduct public meetings in response to public comment. A public meeting is intended for the taking of public comment, and is not a contested case proceeding under the APA. The executive director shall hold a public meeting when there is a significant degree of public interest in a draft permit, or when required by law. If a contested

case hearing is held on the application, the public meeting shall be conducted as part of the preliminary hearing under §80.105 of this title (relating to Preliminary Hearings), unless the executive director specifies a different time and place for the public meeting. The public comment period shall automatically be extended to the close of any public meeting. Public notice of the meeting shall be given as required by commission rule. A tape recording or written transcript of the public meeting shall be made available to the public.

(3) Any person who failed to file timely public comment, failed to file a timely hearing request, failed to participate in the public meeting held under this subsection, and failed to participate in the public hearing held under Chapter 80 of this title (relating to Contested Case Hearings) may file a motion for rehearing under §50.19 of this title (relating to Notice of Commission Action, Motion for Rehearing) or §55.27 of this title (relating to Commission Action on Hearing Request) or §80.271 of this title (relating to Motion for Rehearing) or may file a motion for reconsideration under §50.39 of this title (relating to Motion for Reconsideration) only to the extent of the changes from the draft permit to the final permit decision.

(c) [b] This subsection applies to applications other than those under subsection (b) of this section. The commission may designate an agency office to process public comment under this subsection.

(1) The designated office may evaluate and respond to public comment, other than timely hearing requests, when appropriate.

(A) If the application and timely hearing requests are considered by the commission, the designated office should prepare any response to public comment no later than ten days before the commission meeting at which the commission will evaluate the hearing requests. The response shall be made available to the public and filed with the chief clerk.

(B) If the application is approved by the executive director under Chapter 50, Subchapter C of this title [(relating to Action by the Executive Director)], any response to public comment should be made no later than the time of the executive director's action on the application.

(2) The designated office shall hold a public meeting when there is a significant degree of public interest or when otherwise appropriate to assure adequate public participation. A public meeting is intended for the taking of public comment, and is not a contested case proceeding under the APA. The applicant shall attend any such public meeting held by the designated office. When the designated office holds a public meeting it shall respond to public comment either by giving an immediate oral response or by preparing a written response. The response shall be made available to the public.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on July 25, 1997.

TRD-9709772

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission



Chapter 80. Contested Case Hearings

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §§80.105, 80.109, 80.115, 80.127, 80.251, 80.271, and 80.273, as well as new §80.254 and §80.274, concerning public participation and motions for rehearing. The purpose of the proposed action is to establish a system for the commission's consideration of and response to public comments on applications and draft permits for federally authorized underground injection control (UIC), Texas Pollutant Discharge Elimination System (TPDES), and Resource Conservation and Recovery Act (RCRA) permit programs and to respond to recent legislative action.

EXPLANATION OF THE PROPOSED RULES. The proposed amendment to §80.105, concerning Preliminary Hearings, provides that a preliminary hearing is required for an enforcement matter under federally authorized UIC or TPDES permit programs. This will provide an opportunity for persons seeking to intervene to seek party status in an enforcement proceeding concerning these federally authorized programs.

The proposed amendment to §80.109, concerning Designation of Parties, provides that the parties to a contested enforcement case may include any other party granted permissive intervention by the State Office of Administrative Hearings (SOAH) administrative law judge in an enforcement proceeding concerning a UIC or TPDES permit under specified conditions.

The proposed amendment to §80.115, concerning Rights of Parties, provides that only the executive director may seek to amend or add to the violations alleged in the initiating petition in an enforcement proceeding.

The proposed amendment to §80.127, concerning Evidence, requires the executive director to make copies of all public comment received during the public comment period on a proposed RCRA, UIC, or TPDES permit or amendment part of the record. It also requires the executive director's responses to public comments to be placed in the record. The amendment also allows all other parties to a RCRA, TPDES, or UIC permit proceeding to enter into the record written responses to comments received into the record by a judge during a preliminary hearing or submitted by persons not designated as parties during a hearing.

The proposed amendment to §80.251, concerning Judge's Proposal for Decision, provides that if a proposal for decision in a permitting case for a federally authorized RCRA, TPDES, or UIC program is adverse to a party, the decision must include proposed changes to the draft permit recommended by the judge in response to public comment.

The proposed new §80.254, concerning Settlement of Enforcement Cases, provides for an agreed settlement between the executive director and the respondent of an enforcement case. The section requires the executive director and the respondent to submit the settlement to the judge, and it requires the judge to submit the proposed agreement to the commission for consideration. The new section also requires the judge to provide

time to a dissenting party to file comments, and provides for the commission's consideration of those comments. The section allows the commission, after notice and opportunity for comment, to either approve or disapprove the agreement, or remand it to SOAH for a hearing. This will provide for notice and comment on proposed settlements and for settlements by fewer than all the parties to an enforcement proceeding, with commission approval.

The proposed amendments to §80.271, concerning Motion for Rehearing, and §80.273, concerning Decision Final and Appealable, make conforming changes to provide for proposed new §80.274.

Proposed new §80.274, concerning Motion for Rehearing Not Required in Certain Cases, provides that if all parties to a contested case agree, the date for filing a motion for rehearing can be shortened, not to exceed 20 days beyond the order date. This change is in response to Senate Bill 637, 75th Legislature, 1997.

FISCAL NOTE. Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the section is in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the sections.

PUBLIC BENEFIT. Mr. Minick also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be enhanced public input on certain federally authorized permit programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

TAKINGS IMPACT ASSESSMENT. The commission has prepared a Takings Impact Assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of these rules is to establish a system for the commission's consideration of and response to public comments on applications and draft permits for certain federally authorized permit programs and respond to recent legislative action. The rules will substantially advance these specific purposes by providing specific provisions on these matters. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because they concern commission procedural rules. The following exceptions to the application of Texas Government Code, Chapter 2007, apply to these rules: the action fulfills an obligation mandated by federal law, advances the health and safety purpose, and imposes no greater burden than is necessary to achieve the health and safety purpose.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW. The executive director has reviewed the proposed rule-making and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, nor will affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rules are not subject to the CMP.

PUBLIC HEARING. A public hearing on this proposal will be held September 8, 1997, at 2:00 p.m. in Room 2210 of Texas Natural Resource Conservation Commission (TNRCC) Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS. Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 97159-080-AD. Comments must be received by 5:00 p.m., September 8, 1997. For further information, please contact Brian Christian, Policy Research Division, (512) 239-1760.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Subchapter C. Hearing Procedures

30 TAC §§80.105, 80.109, 80.115, 80.127

STATUTORY AUTHORITY. The amendments are proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission; and under Texas Government Code, §2001.144 and §2001.145.

The proposed amendments implement Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412.

§80.105. Preliminary Hearings.

(a) After the required notice has been issued, the judge shall convene a preliminary hearing to consider the jurisdiction of the commission over the proceeding. A preliminary hearing is not required in an enforcement matter, **except in those under federally authorized underground injection control (UIC) or Texas Pollutant Discharge Elimination System (TPDES) programs.**

(b)-(d) (No change.)

§80.109. Designation of Parties.

(a) (No change.)

(b) Parties.

(1)-(5) (No change.)

(6) The parties to a contested enforcement case include :

(A) the respondent(s) ; [, and]

(B) any other parties authorized by statute ; and [.]

(C) **in proceedings alleging a violation of or failure to obtain a UIC or TPDES permit, or a state permit for the same discharge covered by a National Pollutant Discharge Elimination System (NPDES) permit that has been assumed by the state under NPDES authorization, any other party granted permissive intervention by the judge. In exercising discretion whether to permit intervention, the judge shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.**

(7)-(8) (No change.)

(c)-(d) (No change.)

§80.115. Rights of Parties.

(a) A party has the right to conduct discovery, present a direct case, cross-examine witnesses, make oral and written arguments, obtain copies of all pleadings, motions, replies, and other filed documents, receive copies of all notices issued by the commission concerning the proceeding to which the person is a party, and, as directed by the judge, otherwise fully participate as a party in the proceeding. **In an enforcement proceeding, no party except the executive director may seek to amend or add to the violations alleged in the petition that initiated the case.**

(b) (No change.)

§80.127. Evidence.

(a)-(e) (No change.)

(f) **Public comment. In Resource Conservation and Recovery Act, underground injection control, and Texas Pollutant Discharge Elimination System permit cases for which the commission has permitting authority by authorization from the federal government, the executive director shall place into the record copies of all public comment on the application received by the commission during the public comment period and copies of the executive director's responses. All parties to the proceeding may also put into the record written responses to public comments received into the record by the judge under this subsection or under §80.105 or §80.111 of this title (relating to Preliminary Hearings and Persons Not Parties).**

(g) [(f)] Invoking the "rule." At the request of any party, and subject to the discretion of the judge, witnesses may be placed under "the rule" as provided by, and subject to the conditions of, Texas Rule of Civil Procedure 267 and Texas Rule of Evidence 613.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on July 25, 1997.

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Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: January 14, 1998

For further information, please call: (512) 239-1966



Subchapter F. Post Hearing Procedures

30 TAC §§80.251, 80.254, 80.271, 80.273, 80.274

The amendments and new sections are proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission; and under Texas Government Code, §2001.144 and §2001.145.

The proposed amendments and new sections implement Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412.

§80.251. *Judge's Proposal for Decision.*

(a) (No change.)

(b) Proposal for decision: adverse to a party. A proposal for decision shall be filed by the judge who conducted the hearing or by a substitute judge who has read the record. If the proposal for decision is adverse to a party to the proceeding, it shall contain a statement of the reasons for the proposal **and, in underground injection control, Texas Pollutant Discharge Elimination System, and Resource Conservation and Recovery Act permitting cases for which the commission's permitting authority is authorized by the federal government, proposed changes to the draft permit recommended by the judge in response to public comment**, as well as findings of fact and conclusions of law which support the proposal. If any party has filed proposed findings of fact upon the judge's request, the judge shall include with the proposal for decision recommended rulings on all findings of fact so proposed. Where more than one judge has been assigned to hear a particular proceeding, the presiding judge will issue the proposal for decision and the other assigned judge or judges may file comments.

(c) (No change.)

§80.254. *Settlement of Enforcement Cases.*

Where the executive director and the respondent have reached an agreed settlement of an enforcement case, they shall submit the settlement agreement to the judge in writing. The judge shall forward the proposed settlement agreement to the commission for consideration. If there is a party to the case that dissents from the proposed settlement, the judge shall give such party a reasonable time to file comments, and shall forward all timely filed comments to the commission together with the proposed settlement. After any required public notice and opportunity for comment on proposed settlements and consideration of the record, the commission may either approve the proposed settlement, or disapprove it and remand the case to SOAH for hearing.

§80.271. *Motion for Rehearing.*

(a) Filing motion. A [Except as provided by the APA, a] motion for rehearing is a prerequisite to appeal. The motion shall be filed with the chief clerk within 20 days after the date the party or his attorney of record is notified of the decision or order. A party or attorney of record is presumed to have been notified on the date that the decision or order is mailed by first-class mail. On or before the date of filing of a motion for rehearing, a copy of the motion

shall be mailed or delivered to all parties with certification of service furnished to the commission. The motion shall contain:

(1)-(4) (No change.)

(b)-(e) (No change.)

§80.273. *Decision Final and Appealable.*

Except as provided in §80.274 of this title (relating to Motion for Rehearing not Required in Certain Cases), in [In] the absence of a timely motion for rehearing, a decision or order of the commission is final on the expiration of the period for filing a motion for rehearing. If a party files a motion for rehearing, a decision or order of the commission is final and appealable on the date of the order overruling the motion for rehearing or on the date the motion is overruled by operation of law.

§80.274. *Motion for Rehearing not Required in Certain Cases.*

(a) When APA, §2001.144(a)(3) or (4) applies, a commission order is final as specified in the APA, a motion for rehearing is not required, and §80.271 and §80.273 of this title (relating to Motion for Rehearing and Decision Final and Appealable) do not apply.

(b) The commission may issue an order that is final under APA, §2001.144(a)(4) if all parties agree to the specified date in writing or on the record, and if the specified date is not before the date the order is signed or later than the 20th day after the date the order was rendered. For purposes of this subsection, the order is rendered on the date the chief clerk mails the decision or order by first-class mail to the parties. The commission is not required to issue an order under APA, §2001.144(a)(4) even when requested by all parties. When the parties request, and the commission agrees, to issue a final order under APA, §2001.144(a)(4), each party shall thereby waive any allegations of error not in the party's exceptions to the proposal for decision, reply to exceptions, or discussed as an issue in the judge's proposal for decision.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on July 25, 1997.

TRD-9709770

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: January 14, 1998

For further information, please call: (512) 239-1966



Chapter 305. Consolidated Permits

Subchapter E. Actions, Notice, and Hearing

30 TAC §305.106

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Natural Resource Conservation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Natural Resource Conservation Commission (commission) proposes the repeal of §305.106, concerning Response to Comments. The purpose of the repeal is to remove

duplicative requirements concerning responses to comments on draft permits and to complete the repeal of Chapter 305, Subchapter E.

EXPLANATION OF THE PROPOSED RULE. The proposed repeal will eliminate public comment procedures that are duplicative to those contained in 30 TAC §55.25, concerning Public Comment Processing. The repeal will also complete the repeal of Chapter 305, Subchapter E, which was begun during the commission's revisions of the procedural rules. Additionally, the commission is concurrently proposing amendments to §55.25.

FISCAL NOTE. Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the repeal is in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the repeal.

PUBLIC BENEFIT. Mr. Minick also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be enhanced consistency within the commission's procedural requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

TAKINGS IMPACT ASSESSMENT. The commission has prepared a Takings Impact Assessment for this rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rule is to remove duplicative requirements and increase the consistency of the commission's procedural requirements. The rule will substantially advance these specific purposes by providing specific provisions on these matters. Promulgation and enforcement of this rule will not burden private real property which is the subject of the rule because it concerns commission procedural rules. The following exceptions to the application of Texas Government Code, Chapter 2007, apply to this rule: the action significantly advances the health and safety purpose and imposes no greater burden than is necessary to achieve the health and safety purpose.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW. The executive director has reviewed the proposed rule-making and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, nor will affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rule is not subject to the CMP.

PUBLIC HEARING. A public hearing on this proposal will be held September 8, 1997, at 2:00 p.m. in Room 2210 of Texas Natural Resource Conservation Commission (TNRCC) Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS. Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 97159-080-AD. Comments must be received by 5:00 p.m., September 8, 1997. For further information, please contact Brian Christian, Policy Research Division, (512) 239-1760.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY. The repeal is proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The proposed repeal implements Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412.

§305.106. *Response to Comments.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on July 25, 1997.

TRD-9709769

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: January 14, 1998

For further information, please call: (512) 239-1966

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 81. Interaction With The Public

37 TAC §81.61

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Youth Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Youth Commission (TYC) proposes the repeal of §81.61, concerning notification of a facility opening or relocating. This section is being repealed to allow for publishing a replacement section.

Terry Graham, Director of Finance, has determined that for the first five-year period the repeal as proposed is in effect there

will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Graham also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeals will be more efficient management by government. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The repeal is proposed under the Human Resources Code, §61.040, which provides the Texas Youth Commission with the authority to establish and operate additional treatment and training facilities, and §61.048, which provides the Texas Youth Commission with the authority to design, construct, equip, furnish, and maintain buildings and improvements at facilities under its jurisdiction.

The proposed repeal implements the Human Resource Code, §61.034.

§81.61. Notification of a Facility Opening or Relocating.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on July 30, 1997.

TRD-9709869

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: September 8, 1997

For further information, please call: (512) 424-6244



The Texas Youth Commission (TYC) proposes new §81.61, concerning notification of a facility opening or relocating. The new section provides for notification to the public and elected officials of the opening or relocation of certain TYC operated and contracted residential programs at selected sites. The section specifically addresses thirty day notice of elected officials, conditions for a public meeting, and solicitation of written public comment.

Terry Graham, Director of Finance, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be opportunity for comment. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The new section is proposed under the Human Resources Code, §61.040, which provides the Texas Youth Commission with the authority to establish and operate additional treatment and training facilities, and §61.048, which provides the Texas Youth Commission with the authority to design, construct, equip, furnish, and maintain buildings and improvements at facilities under its jurisdiction.

The proposed rule implements the Human Resource Code, §61.034.

§81.61. Notification of a Facility Opening or Relocating.

(a) Purpose. The purpose of this rule is to provide for notification to the public and elected officials of the opening or relocation of certain TYC operated and contracted residential programs at selected sites.

(b) Thirty-day Notice. Except as provided in subsection (d), thirty days before beginning operation or construction of a TYC operated or contracted residential program that serves six or more youth or before relocating such a program that is currently operated elsewhere, notice indicating the proposed address and general description of the program will be given to the public and certain elected officials as follows:

(1) notice will be published in a newspaper of general circulation in the county in which the proposed program is to be located and include where public comment on the proposal may be sent for review; and

(2) notice will be mailed to each city council member, county commissioner, state representative, and state senator who represents the area in which the proposed program is to be located.

(c) Public Meeting. Upon request by one of the elected officials, a public meeting conducted by TYC or the contract operator will be held to inform the public about the proposed residential program and to receive public comment.

(1) Thirty days before the date of the meeting, TYC or the contract operator will publish notice of the date, hour, place, and subject of the meeting in three consecutive issues of a newspaper that has a general circulation in the county in which the proposed facility is to be located.

(2) Thirty days before the date of the meeting, TYC or the contract operator will mail a copy of the notice to each city council member, county commissioner, state representative, and state senator who represents the area in which the proposed program is to be located.

(3) A private vendor conducting a public meeting under this section, other than a vendor that operates as a nonprofit corporation, is responsible for the costs of providing notice and holding the public meeting.

(4) The notice of the meeting must specifically state the address of the proposed facility, a description of the proposed program and the purpose of the meeting.

(5) The public meeting will be held at a site as close as practicable to the proposed site of the residential program.

(d) Sixty-day Notice for Sites 1,000 Feet from Designated Places. If a request to be provided such notice has been made, sixty days before beginning construction or operation of a TYC or contracted residential facility or parole office that is located within 1,000 feet of a residential area, a primary or secondary school, a park or public recreation area, or a place of worship, TYC or the contract operator will mail the commissioners court and governing body of the municipality notice of the proposed location. This section does not apply to:

- (1) facilities that on September 1, 1997 are in operation, under construction, under contract for operation or construction, or planned for operation on land owned or leased for the purpose;
- (2) foster homes;
- (3) temporary facilities operating less than one year at the location;
- (4) expansion of existing facilities;
- (5) facilities not operating primarily for use as a correctional or rehabilitation facility, but housing TYC youth only for a treatment or educational purpose;
- (6) facilities that require special or conditional use permits for operation; and
- (7) parole offices located in commercial use areas.

(e) Denial of Consent to Operate. A residential facility or parole office that is subject to the 60-day notice requirement of subsection (d) may not be operated at the proposed location if consent for its operation there is denied by resolution of the commissioners court or governing body of the municipality.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on July 30, 1997.

TRD-9709870

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: September 8, 1997

For further information, please call: (512) 424-6244



Chapter 85. Admission and Placement

Subchapter B. Placement Planning

37 TAC §85.29

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Youth Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

(Editor's note: The Texas Youth Commission proposes for permanent adoption the repealed section it adopts on an emergency basis in this issue. The text of the repealed section is in the Emergency Rules section of this issue.)

The Texas Youth Commission (TYC) proposes repeal of §85.29, concerning program completion and movement. The

section is being repealed to allow for the publication of a new section which will implement requirements in House Bill 1550, applicable sections passed by the 75th Legislative Session, and effective on June 19, 1997.

Terry Graham, Director of Finance, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the section will be compliance with new legislation. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The repeal is proposed under the Human Resources Code, §61.077 which provides the Texas Youth Commission authority to discharge children with mental illness or mental retardation and §61.0772, which provides the Texas Youth Commission authority to examine youth before discharge.

The proposed rule implements the Human Resource Code, §61.034.

§85.29. Program Completion and Movement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on July 28, 1997.

TRD-9709780

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: September 8, 1997

For further information, please call: (512) 424-6244



(Editor's note: The Texas Youth Commission proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The Texas Youth Commission (TYC) proposes new §85.29, concerning program completion and movement. The new section will replace the current version, being repealed, and serves the same function, i.e., provides criteria and procedures whereby the agency will move youth in custody from an assigned placement to a placement of either more or less restriction. The new section will also allow for rewording and addition of procedures for discharging from custody a youth who is mentally ill or mentally retarded if the youth has completed the minimum length of stay and is unable to progress in the Commission's rehabilitation programs because of the youth's mental illness or mental retardation. Certain other youth may be transferred to TYC placement of less restriction than the

TYC placement to which they are currently assigned under criteria herein. The new provisions will implement requirements in House Bill 1550, applicable sections passed by the 75th Legislative Session, and effective on June 19, 1997.

Terry Graham, Director of Finance, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be compliance with new legislation. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The new section is proposed under the Human Resources Code, §61.077 which provides the Texas Youth Commission authority to discharge children with mental illness or mental retardation and §61.0772, which provides the Texas Youth Commission authority to examine youth before discharge.

The proposed rule implements the Human Resource Code, §61.034.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on July 28, 1997.

TRD-9709781

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: September 8, 1997

For further information, please call: (512) 424-6244



Chapter 87. Treatment

Subchapter B. Special Needs Offender Program

37 TAC §87.77, §87.79

The Texas Youth Commission (TYC) proposes new §87.77 and §87.79, concerning early transition of mentally ill and mentally retarded youth, and discharge of mentally ill and mentally retarded youth. The new sections provide procedures whereby the agency will discharge from custody a youth who is mentally ill or mentally retarded if the youth has completed the minimum length of stay and is unable to progress in the Commission's rehabilitation programs because of the youth's mental illness or mental retardation. Certain other youth may be transferred to a TYC placement of less restriction than the TYC placement to which they are currently assigned under criteria herein.

Terry Graham, Director of Finance, has determined that for the first five-year period the section is in effect there will be no

fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be efficient use of government resources. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The new sections are proposed under the Human Resources Code, §61.077, which provides the Texas Youth Commission with the authority to discharge children with mental illness or mental retardation and §61.0772, which provides the Texas Youth Commission authority to examine youth before discharge.

The proposed rules implement the Human Resource Code, §61.034.

§87.77. Early Transition of Mentally Ill and Mentally Retarded Youth.

(a) Purpose. The purpose of this rule is to provide criteria and a process whereby the agency transitions to less restriction youth who have completed length of stay requirements and who are unable to derive further benefit from the agency's rehabilitation programs because of mental illness or mental retardation.

(b) Applicability. See (GAP) §85.29 of this title (relating to Program Completion and Movement) for movement criteria for transition of other youth.

(c) Youth who meet specific criteria herein shall be transitioned to a placement of less restriction.

(d) Youth considered to be mentally ill or mentally retarded are those who have a current diagnosis of mental illness or mental retardation by a licensed psychologist and/or psychiatrist.

(e) Transition Criteria. Youth with a mental disability who have attained maximum benefit at initial placement and therefore shall be transitioned are those who meet the following eligibility criteria:

(1) youth has completed minimum length of stay or minimum period of confinement (for sentenced offenders);

(2) youth has completed no violation of major rules of conduct within 30 days prior to determination of eligibility or 90 days if the youth is a type A violent offender or sentenced offender;

(3) youth has been evaluated by a psychiatrist and/or psychologist and diagnosed with:

(A) mental illness, a primary brain disorder, (e.g., psychotic disorder, bipolar disorder, major depression, organic disorder, severe neurological deficit); or

(B) mental retardation, i.e., an IQ below 62.5 with accompanying deficits in adaptive behavior); and

(4) a licensed psychiatrist and/or psychologist has determined that the youth's behavior with respect to the mental disability has stabilized and that the youth is unable to derive further benefit

from the agency's resocialization program and meet phase requirements because of the mental illness or mental retardation.

(f) Procedure for Transition of Youth with Mental Disability. Movement of the youth shall occur no later than thirty days following determination of eligibility.

§87.79. Discharge of Mentally Ill and Mentally Retarded Youth.

(a) Purpose. The purpose of this rule is to provide criteria and a process whereby the agency discharges from custody youth who have completed length of stay requirements and who are unable to progress in the agency's rehabilitation programs because of mental illness or mental retardation.

(b) Applicability.

(1) Requirements in this policy do not apply to sentenced offender youth. See (GAP) §85.29 of this title (relating to Program Completion and Movement) for policies relating to sentenced offenders.

(2) See (GAP) §85.61 of this title (relating to Discharge) for discharge requirements for youth qualified herein and all other TYC youth.

(c) Youth who meet specific criteria herein shall be discharged.

(d) Youth considered to be mentally ill or mentally retarded are those who have a current diagnosis of mental illness or mental retardation by a licensed psychologist and/or psychiatrist as required.

(e) Discharge Criteria.

(1) Youth with a mental illness who are unable to progress in rehabilitation programs and therefore shall be discharged are those who meet the following criteria:

(A) the youth has completed the initial minimum length of stay;

(B) the youth has been diagnosed with a primary brain disorder (e.g., psychotic disorder, bipolar disorder, major depression, organic disorder, severe neurological deficit);

(C) a licensed psychologist and psychiatrist has determined that the mental illness has not stabilized and that the mental illness is the reason for the youth's inability to engage in productive interaction as required by the agency's resocialization program; and;

(D) a licensed psychologist and psychiatrist has determined that as a result of mental illness, the youth:

(i) is likely to cause serious harm to himself;

(ii) is likely to cause serious harm to others; or

(iii) will, if not treated for the mental illness, continue to suffer severe and abnormal mental, emotional, or physical distress, will continue to experience deterioration of his ability to function independently, and is unable to make a rational and informed decision as to whether or not to submit to treatment.

(2) Youth with mental retardation who are unable to progress in rehabilitation programs and therefore, shall be discharged, are those who meet the following criteria:

(A) the youth has completed the initial minimum length of stay;

(B) the youth has been diagnosed with an IQ below 62.5 with accompanying deficits in adaptive behavior;

(C) a licensed psychologist and or psychiatrist has determined that the mental retardation is the reason for the youth's inability to engage in productive interaction as required by the agency's resocialization program; and

(D) a licensed psychologist and or psychiatrist has determined that because of retardation, the youth:

(i) represents a substantial risk of physical impairment or injury to himself or others; or

(ii) is unable to provide for and is not providing for his/her most basic personal physical needs.

(f) Procedure for Discharge of Youth with Mental Disability.

(1) For youth who meet discharge criteria, the agency will file an application in the youth's committing county for determination of appropriate mental health services. See (GAP) §87.69 of this title (relating to Commitment to State Mental Hospitals) for relevant procedures.

(2) Discharge shall occur thirty days after the filing of the application.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on July 28, 1997.

TRD-9709777

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: September 8, 1997

For further information, please call: (512) 424-6244

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part III. Texas Commission on Alcohol and Drug Abuse

Chapter 150. Counselor Licensure

40 TAC §§150.10, 150.33, 150.52

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §§150.10; 150.33; and 150.52 concerning fees, background investigations, and reciprocity. Section 150.10 is revised to establish a \$25 surcharge for individuals applying for a license through reciprocity. This fee is required to cover the cost of obtaining a criminal history report from the Federal Bureau of Investigations (FBI). Section 150.33 is revised to state that the background investigation for reciprocity applicants includes a criminal history report from the FBI. Section 150.52 further specifies that the reciprocity applicant must submit fingerprints and the \$25 surcharge to the commission.

Terry Faye Bleier, Executive Director, has determined that for the first five-year period the rules are in effect there will be no

fiscal implications for state or local government as a result of enforcing the rules.

Ms. Bleier also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be complete background investigations for out-of-state applicants. There will be no effect on small businesses. The anticipated economic cost to persons required to comply with the proposed amendments is \$35. Applicants will be required to pay \$10 to obtain fingerprints, and the commission's cost is \$25.

Comments on the proposal may be submitted to Tamara Allen, Program Compliance, Texas Commission on Alcohol and Drug Abuse, 9001 North IH 35, Suite 105, Austin, Texas 78753-5233.

The amended sections are proposed under the Texas Civil Statutes, Article 4512o, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to establish procedures for the licensure of chemical dependency counselors.

The code affected by the amended rules is Texas Civil Statutes, Article 4512o.

§150.10. Fees.

- (a) The schedule for licensure fees is:
 - (1)-(4) (No change.)
 - (5) certificate replacement fee - \$25 ;
 - (6) reciprocity surcharge - \$25.**
- (b)-(f) (No change.)

§150.33. Background Investigation.

- (a) (No change.)
- (b) The commission obtains a criminal history report from the Texas Department of Public Safety. **When an applicant applies**

through reciprocity [If authorized by statute], the commission [will] also **obtains** [obtain] a criminal history report from the Federal Bureau of Investigations (FBI).

(c)-(j) (No change.)

§150.52. Reciprocity.

(a)-(c) (No change.)

(d) As part of the background investigation, the commission shall obtain a criminal history report from the Federal Bureau of Investigations (FBI).

(1) The applicant shall submit a set of fingerprints obtained through an authorized law enforcement agency to the commission.

(2) The applicant shall also pay a \$25 surcharge to cover the cost of obtaining the criminal history report from the FBI.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on July 30, 1997.

TRD-9709859

Mark S. Smock

Deputy for Finance and Administration

Texas Commission on Alcohol and Drug Abuse

Earliest possible date of adoption: September 8, 1997

For further information, please call: (512) 349-6609

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ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 35. Pharmacy Services

Subchapter F. Reimbursement

25 TAC §35.601, §35.611

On behalf of the State Medicaid Director, the Texas Department of Health (department) submits adoption of an amendment to §35.601, new §35.611, and repeal of §35.901 concerning reimbursement of Medicaid pharmacy providers for prescription services. Sections 35.601 and 35.611 are adopted with changes to the proposed text as published in the June 10, 1997, issue of the *Texas Register* (22 TexReg 5640). The repeal is adopted without changes, and therefore will not be republished.

The amendment clarifies §35.601 by specifying the percentages that apply to the drug ingredient cost. The new §35.611 establishes a dispensing fee reimbursement formula for pharmacy providers participating in the Medicaid Vendor Drug Program which is based on an estimated dispensing expense, the drug acquisition cost for generic and brand name drugs, and an inventory management factor. The new §35.611 also establishes a maximum dispensing fee. The repeal of §35.901 eliminates the cost-based reimbursement methodology, which requires pharmacies participating in the Medicaid Vendor Drug Program to submit annual cost reports that provide detailed financial and statistical information on pharmacies' operations. Implementation of the amended, new and repealed sections is necessary in order for the department to administer the Medicaid Vendor Drug Program in an economical and efficient manner. The new section establishes a clear and understandable reimbursement methodology which is less administratively burdensome on participating providers.

The adoption of §35.611 and the repeal of §35.901 published in the February 9, 1996, issue of the *Texas Register* (21 TexReg 957) were invalidated by an order issued by a state district court. The effect of the court's ruling was to require that the rules that were in effect prior to March 1, 1996, remain in force until the rules are lawfully repealed and a new rule is lawfully adopted. The administrative rules which were published in 21 TexReg 957 were subsequently published in the Title 25 of the Texas Administrative Code, Chapter 35. The rules, as published, do not reflect the facts concerning litigation of the rules and do not

reflect the fact that the state district court order invalidating the rules superseded the Texas Board of Health's action of adopting the rules.

The following comments were received concerning the proposed sections. Following each comment is the department's response and any resulting change(s).

Comment: Several commenters requested clarification of §35.601 concerning instances in which an exception would be made to the 15% discount factor.

Response: The department has changed the text of §36.601 to clarify that an exception to the 15% discount will be made only when the department has obtained information from the manufacturer. A discount factor other than 15% will be applied in very limited situations, and in accordance with departmental pricing practice which has been in place since 1986. These are usually specialty categories of drugs with alternative pricing structures such as narcotics and hemophilia-related products. These types of products either have inaccurate or unobtainable Average Wholesale Price (AWP) or wholesaler cost data. When the department obtains pricing information directly from the manufacturer that indicates that the 15% discount factor would not produce a routine discount, the department may compute a discount that may be greater than or lesser than the 15% discount factor in order to bring the pricing for an outlier product within normal ranges.

Furthermore, it is not the department's intent to use the amended §35.601 to develop alternative discounts applicable to participating pharmacies which obtain unique contractual discounts either from a manufacturer or from an intermediary. It is the department's intention to address these special contract prices through a subsequent rule making.

Comment: Regarding §35.601, several commenters disagreed with the use of the term "routine" as it applies to the 15% discount and requested that it be removed.

Response: The department agrees. The term "routine" has been removed from §35.601.

Comment: Concerning §35.611, several commenters noted that the dispensing fee formula had been revised and the factor that had formerly been in the denominator is proposed to be in the numerator. They have suggested that the factor be placed back in the denominator.

Response: The department agrees and has changed the dispensing fee formula as suggested.

Comment: Concerning §35.611, one commenter requested that the department publish the inflation factor which is to be applied to the dispensing expense 60 days in advance of its effective date.

Response: The department disagrees and no changes were made as a result of this comment. However, the inflation factor is public information and will be made available upon request.

Comment: Concerning the rules in general, a commenter stated that the department should establish incentives for generic substitution.

Response: The department disagrees. This recommendation is inconsistent with current Texas law on substitution. The Medicaid Texas Maximum Allowable Cost policy, implemented in 1985, has resulted in the maximum use of generics. No changes were made as a result of this comment.

Comment: Concerning the rules in general, several commenters suggested that significant savings could be generated by eliminating the three prescription and the six month supply limitation.

Response: This comment is not relevant to this proposal. No changes were made as a result of this comment.

Comment: Concerning the rules in general, several commenters stated that the proposal would have a substantial, negative financial impact on independent pharmacists for which Medicaid comprises a majority of their business, and questioned whether the department has performed any economic studies on this issue.

Response: The department believes that the result of proposed methodology is reasonable and that the financial viability of the pharmacists will be maintained, as the average aggregate reduction resulting from these rules is approximately 4%. The department is unable to assess the actual economic impact on individual pharmacies as there are approximately 3,800 pharmacies which choose to participate in the Texas Medicaid Vendor Drug program on a voluntary basis across the state. The department believes that this rule is reasonable and necessary for the efficient administration of the Texas Medicaid program. No changes were made as a result of this comment.

Comment: Concerning the rules in general, several commenters stated that the effect of the proposal would cause independent pharmacies to close and that access to these services would be seriously harmed.

Response: The department believes that pharmacy providers will continue to remain viable because average reimbursement will be reduced approximately 4%. The department believes that the proposed change is reasonable for all providers. However, the department will be monitoring implementation of the rules in order to ensure that adequate access to pharmacy services is maintained. As a part of their contractual obligation, pharmacy providers are required to give the department 30 days notice before they may cease providing services. If the department finds that adequate access has not been maintained, the department will take further action to remedy the situation and to ensure adequate access to pharmacy

services for Medicaid recipients. No changes were made as a result of this comment.

Comment: Concerning the rules in general, a commenter stated that the department should allow for therapeutic substitution.

Response: This comment is not relevant to the proposal. No changes were made as a result of this comment.

Comment: Concerning the rules in general, a commenter stated that the department should allow for limitations on the formulary.

Response: The department disagrees. The department places certain limitations on the formulary that are allowed by federal law. The department believes any additional limitations to the formulary that are allowed by federal law would be administratively cumbersome and would not be cost effective. No changes were made as a result of this comment.

Comment: Concerning the repealed §35.901, several commenters stated that the department should continue collecting cost report information as the basis for determining dispensing fees. Also, commenters suggested that this could be done on a voluntary basis due to staff limitations.

Response: The department disagrees. The elimination of the cost reporting requirements lessens the administrative and financial burden on both the department and the providers and would be inconsistent with the department's efforts to administer the Medicaid program in an economical and efficient manner. Additionally, a volunteer approach would likely attract those providers with exceptionally high cost. No changes were made as a result of this comment.

Comment: Concerning the rules in general, a commenter stated that the department should allow for replacement of the current state rebate program with direct rebates for formulary placement.

Response: This comment is not relevant to the proposal. The department's current rebate is administered under the authority of federal law (OBRA 1990 and 1993). Additionally, any limitations to the formulary could result in a loss of federal matching funds. No changes were made as a result of this comment.

Comment: Concerning §35.601, several commenters wanted to know the department's justification for the proposed cost basis of the AWP minus 15%, and asked if the department knows how many pharmacies in Texas actually pay AWP minus 15% or better.

Response: The department does not have a precise count of the number of pharmacies that purchase drug products from wholesalers at a pricing level of AWP minus 15%. However, recent state and federal invoice audits in Texas and eleven other states indicate that the average percentage discount from AWP received by community pharmacies exceeds 15%, and that the range of these discounts among these providers is between 14.63% and 20.19% off of AWP. No changes were made as a result of this comment.

Comment: Concerning §35.601, several commenters stated that the department should consider that different types of pharmacies receive different levels of discounts. In particular, chain pharmacies receive larger discounts than small independent

pharmacies and that the proposal ignores these different purchasing patterns.

Response: The department disagrees. The department has been recognizing and paying reduced drug prices to chains since 1986. Under this policy, all purchases from central purchasing entities are paid at a "warehouse" price, which is less than the estimated acquisition cost reimbursed to independent pharmacies. No changes were made as a result of this comment.

Comment: Concerning §35.611, one commenter which provides medications to chronically ill patients, stated that the proposed 2% inventory management factor would prohibit some pharmacies from stocking very expensive drugs.

Response: The department disagrees. The 2% inventory management factor which is in the reimbursement formula was proposed to the department by pharmacy industry representatives through provider associations and represented as adequate to cover pharmacy costs, including costs for stocking and managing inventory. The department therefore believes that the 2% inventory management factor is reasonable and appropriate and is necessary for the efficient administration of the Texas Medicaid Program. No changes were made as a result of this comment.

Comment: Concerning the rules in general, a commenter stated that the department should change its reimbursement policy for over-the-counter drugs and pay them in the same manner as other prescription drugs.

Response: The proposal does not address this policy. No changes were made as a result of this comment.

Comment: Concerning the rules in general, one commenter stated that the department should consider a higher rate of reimbursement for providers whose business is over 80% Medicaid because these pharmacies would be forced to close their doors as a result of the proposal.

Response: The department disagrees. The department believes that the approximate 4% overall reduction is reasonable and the providers will remain economically viable. No changes were made as a result of this comment.

Comment: Concerning the rules in general, one commenter stated that the drug Clozaril requires weekly prescriptions and the department should reimburse the provider each time Clozaril is dispensed. This is currently not permitted because of the restriction on the number of prescriptions per month.

Response: The department disagrees because the prescription limit is not addressed in the proposal, but is addressed in a different rule. No changes were made as a result of this comment.

Comment: Concerning the rules in general, several commenters stated that the department should recognize the uniqueness of their long-term care pharmacy operations. These are pharmacies which do not provide traditional retail service and whose only customers are residents of long-term care facilities. These operations provide 100% delivery, special packaging, 24-hour pharmacist availability, some of which are mandated by Texas Department of Human Services nursing home requirements. They also indicate that they have excep-

tional clerical cost as a result of participating in the Medicaid Vendor Drug program. Due to these factors they believe they should receive an additional \$3.16 reimbursement per prescription, or a total of \$8.43 (\$5.27 + \$3.16) per prescription.

Response: The department recognizes that these operations may entail costs which may be higher than traditional retail pharmacies, though some costs may also be lower. Implementation of the proposal will eliminate cost based reimbursement. The Texas Medicaid Vendor Drug Program does not require these additional services and views these pharmacies' willingness to provide enhanced services as a voluntary effort to maintain a market share of business. Some of these costs are also more appropriately reflected in the Texas Department of Human Services nursing home reimbursement rate. No changes were made as a result of this comment.

Comment: Concerning the rules in general, one commenter stated that the department should look carefully at the extent to which the department should benefit from any purchasing efficiencies that a provider is able to obtain. In particular, if the department intends to extract the full value of a provider's purchasing efficiency, then it will destroy the incentive for the provider to achieve maximum efficiency.

Response: This issue is not relevant to this proposal. The department must administer the Medicaid program in an economic and efficient manner. No changes were made as a result of this comment.

Comment: Concerning the rules in general, several commenters stated that the department does not provide any reason to implement the proposal other than House Concurrent Resolution (HCR) 215.

Response: The department disagrees. HCR 215 is not the basis for the proposal, although the proposal is consistent with the provisions of HCR 215. Also, the purview of HCR 215 is far broader than the scope of the proposal. The department is required to administer the Medicaid program in an economic and efficient manner. The department has statutory authority to establish provider reimbursement rates as set out in Human Resource Code Chapter 32. In establishing provider reimbursement rates, the department must do so in accordance with the budget allocated for the department and for the program. No changes were made as a result of this comment.

Comment: Concerning the rules in general, several commenters stated that the department's employment of the median approach in establishing the dispensing expense is inappropriate since it automatically eliminates all rate outliers and virtually eliminates any opportunity for profit. They suggest using a mean (average) approach and restoring the 7% profit factor.

Response: The department disagrees. The department believes the proposed \$5.27 dispensing expense is reasonable and appropriate. Additionally, employing a mean (average) approach inappropriately provides an incentive for pharmacies to be reimbursed for excessive costs. Use of a mean (average) approach provides a disincentive for providers to operate in an efficient manner. No changes were made as a result of this comment.

Comment: Concerning the rules in general, several commenters stated that by not granting Public Health Service providers special dispensation for their unique types of products and services, the state would ultimately end up spending more for these products.

Response: The department is currently collecting data on this issue and is considering changes which would address this issue. No changes were made as a result of this comment.

Comment: Concerning the rules in general, a commenter stated that the proposal would not allow pharmacy/home health providers to cover their cost of operations. This provider offers home infusion therapies and a wide range of services available to chronically ill clients in a home, ambulatory or other subacute care setting.

Response: The department disagrees. The department believes the proposal is reasonable and appropriate. The department will continue to monitor this situation. Additionally, this provider may be eligible to receive payment for services provided under the Title XIX Home Health program, the Comprehensive Care Program, or the Hyperalimentation program, which would appear appropriate given the description of services. No changes were made as a result of this comment.

Comment: Concerning §35.611, a commenter stated that pharmacists practicing in a variety of organized health care setting (hospitals, home health agencies, managed care organizations) have exceptional cost structures. In particular, because they often provide very high cost drugs in a home or ambulatory setting, the 2% inventory management factor and the \$200 dispensing expense cap would result in significant economic loss.

Response: The department disagrees. The department will continue to monitor this situation. No changes were made as a result of this comment.

The commenters included Senator Judith Zaffirini, the Texas Pharmacy Association, the Texas Retailers' Association, Legend Pharmacies Southwest, the Texas Coalition of Long-Term Care Pharmacies, the Texas Society of Health-System Pharmacists, Public Health Service providers supplying hemophilia related products, and individual providers. Several commenters offered suggestions for clarification. Most commenters spoke against the proposal indicating that either the current methodology should be maintained, or that some other mechanism should be employed that would increase reimbursement.

The proposed amendment and new section are proposed under the Human Resources Code §32.021, and Government Code §531.021, which provides the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program and are submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program, and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

§§35.601. *Legend and Nonlegend Medications.*

For all medication, legend and nonlegend, covered by the Vendor Drug Program and appearing in the Texas Drug Code Index (TDCI) and updates, the following requirements must be met.

(1) Reimbursement to the pharmaceutical provider is based on the department's best estimate of acquisition cost (EAC), verifiable by invoice audit, plus the department's currently established dispensing fee per prescription, or the usual and customary price charged the general public, whichever is lower.

(2) Estimated acquisition cost is defined as wholesale estimated acquisition cost (WEAC) or direct estimated acquisition cost (DEAC), according to the pharmacist's usual purchasing source and the pharmacist's usual purchasing quantity, or as a maximum allowable cost (MAC) for multi-source products. All drug purchases from a central purchasing entity must be billed to the department as warehouse purchases. The WEAC is established by the department using the current redbook, redbook update, First Databank, or manufacturer pricing less a discount of 15%, which represents discounts received by pharmacists on wholesale drug purchases. The WEAC may not exceed wholesaler cost, as supplied by the drug manufacturers, plus a 12% markup representing wholesaler operating costs and profits. Exceptions to the percentages may be made on certain drugs and/or drug categories where additional information supplied to the department by the manufacturer indicates that application of the specific WEAC percentages does not reflect customarily available prices. The DEAC is established by the department using direct price information supplied by drug manufacturers. Providers are reimbursed only at the DEAC on all drug products that are available from select manufacturers/distributors who actively seek and encourage direct purchasing. The TDCI is used as the reference from drugs included in the scope of benefits and for allowable package sizes. No acquisition cost is billed to the department for samples dispensed.

(3) (No change.)

§§ 35.611. *Dispensing Fee*

The Texas Department of Health (department) reimburses contracted Medicaid pharmacy providers according to the dispensing fee formula defined in this section. The dispensing fee is determined by the following formula: Dispensing Fee = (((Estimated Drug Ingredient Cost + Estimated Dispensing Expense) divided by (1 - Inventory Management Factor)) - Estimated Drug Ingredient Cost) + Delivery Fee, where;

(1) The estimated drug ingredient costs are defined in §35.601 of this title (relating to Legend and Nonlegend Medication) and §35.605 of this title (relating to Texas Maximum Allowable Cost).

(2) The estimated dispensing expense is \$5.27 for state fiscal year 1997. This will be adjusted annually, subject to the availability of funds, to account for general inflation.

(3) The inflation adjustment will be made, subject to the availability of funds, on the first day of the state fiscal year. The projected rate of inflation for the upcoming state fiscal year shall be based upon a forecast of the Implicit Price Deflator - Personal Consumption Expenditures produced by a nationally recognized forecasting firm.

(4) The inventory management factor is 2%.

(5) The total dispensing fee shall not exceed \$200 per prescription.

(6) A delivery fee shall be paid to approved providers offering no-charge prescription to all Medicaid recipients requesting delivery. The delivery fee is \$.15 per prescription and is to be paid

on all Medicaid prescriptions filled. This delivery fee is not to be paid for over-the-counter drugs which are prescribed as a benefit of this program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 29, 1997.

TRD-9709812

Susan K. Steeg

General Counsel

Texas Department of Health

Effective date: August 18, 1997

Proposal publication date: June 10, 1997

For further information, please call: (512) 458-7236



Subchapter I. Support Documents

25 TAC §35.901

The repeal is proposed under the Human Resources Code §32.021, and Government Code §531.021, which provides the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program and are submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program, and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Susan K. Steeg

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Texas Department of Health

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part III. Texas Commission on Alcohol and Drug Abuse

Chapter 144. Funding Requirements

Subchapter A. Definitions

40 TAC §144.1, §144.11

The Texas Commission on Alcohol and Drug Abuse adopts the repeal of §144.1 and §144.11, concerning requirements for funded providers, without changes to the proposed text as published in the June 24, 1997, issue of the *Texas Register* (22 Tex Reg 6009).

These sections are repealed to allow adoption of new funding rules, and the repeal will delete obsolete language.

These sections describe applicability and define terms used in this chapter.

No comments were received regarding adoption of the repeal.

The repeals are adopted under the Texas Health and Safety Code, §461.012(15), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the repealed sections is the Texas Health and Safety Code, Chapter 461.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mark S. Smock

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Texas Commission on Alcohol and Drug Abuse

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Subchapter A. Definitions

40 TAC §144.1, §144.11, §144.21

The Texas Commission on Alcohol and Drug Abuse adopts new §§144.1, 144.11, and 144.21, concerning requirements for service providers funded by the commission, with changes to the proposed text as published in the June 24, 1997, issue of the *Texas Register* (22 TexReg 6009).

The new rules are adopted to replace existing rules for funded providers, which are being repealed. Reference to intervention services has been removed from §144.1. In §144.11 the term "organization" has been replaced with "provider". In §144.21 the definition for intervention service has been eliminated, and the following definitions have been modified: case management, counseling, counselor, crisis intervention, life skills training (which replaces coping skills training), provider, and staff.

These sections establish the general provisions relating to this chapter, including the applicability of the rules, the variance process, and definitions.

The commission received comments from the Association of Substance Abuse Service Providers of Texas, Christian Farms/Treehouse, Inc., and a number of individuals.

Comment: Given the broad range of entities receiving funding, allowing variances makes practical sense.

Response: The commission agrees with this comment.

Comment: What happened to the definition of medical indigence? Is this requirement removed through the use of the new financial criteria requirements in §144.521?

Response: Yes. The proposed wording does not specifically reference medical indigency, so the term is not defined.

Comment: Having the language regarding relationship with chemical dependency counselor included in definition for client is opposed.

Response: This wording is a revision of current language that alerts providers to the fact that a counselor has an obligation to refrain from non-professional relationships with clients for two years after the client leaves treatment. This language was added because so many complaints were related to inappropriate counselor-client relationships. It is generally recognized in the counseling professions that a counselor has a professional relationship with a client for two years. The definition remains as proposed.

Comment: The definition of adult should say "under the age of 18".

Response: The definition has been corrected.

The repeals are adopted under the Texas Health and Safety Code, Title 6, Subtitle B, §461.012(15), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the new rules is the Texas Health and Safety Code, Title 6, Subtitle B, Chapter 461.

§144.1. Applicability.

(a) This chapter applies to all prevention and treatment programs funded by the commission.

(b) Where other laws apply, however, state agencies funded by the commission shall not be required to comply with comparable commission rules.

§144.11. Variances.

The commission's executive director may grant a temporary variance from a requirement in this chapter to a provider or a group of providers. To be eligible for a variance, the provider must show that an alternative method is used to meet the intent of the rule and the services are not significantly affected. All variances must be requested and approved in writing.

§144.21. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Abuse- Any act or failure to act which is done knowingly, recklessly or intentionally, including incitement to act, which caused or may have caused injury to a client. Injury may include, but is not limited to: physical injury, mental disorientation, or emotional harm, whether it is caused by physical action or verbal statement. Client

abuse includes: any sexual activity between facility personnel and a client; corporal punishment; nutritional or sleep deprivation; efforts to cause fear; the use of any form of communication to threaten, curse, shame, or degrade a client; restraint that does not conform with these standards; coercive or restrictive actions taken in response to the client's request for discharge or refusal of medication or treatment that are illegal or not justified by the client's condition; and any other act or omission classified as abuse by the Texas Family Code, §261.001.

Adolescent-An individual 13 through 17 years of age whose disabilities of minority have not been removed by marriage or judicial decree.

Adult-An individual 18 years of age or older, or an individual under the age of 18 whose disabilities of minority have been removed by marriage or judicial decree.

Approve-Authorize in writing.

Assessment (treatment)-The process used to gain sufficient information to identify, among other things, the participant's strengths, problems, and needs as they relate to the use/abuse of alcohol and/or other drugs and the risk of contracting or transmitting infectious diseases/sexually transmitted diseases.

Case management-Services provided by an accountable staff person which include:

- (A) linking a client with needed services;
- (B) helping a client develop skills to use basic community resources and services; and
- (C) monitoring and coordinating the services received by a client.

Chemical dependency-The abuse of, psychological or physical dependence on, or addiction to alcohol, a toxic inhalant, or any substance designated as a controlled substance in the Texas Controlled Substances Act.

Child-An individual under the age of 13.

Client-An individual who has been admitted to a substance abuse treatment facility licensed or funded by the commission and is currently receiving services. A licensed chemical dependency counselor providing chemical dependency services at a facility shall not have a non-professional relationship with any client receiving chemical dependency or related services from the facility for two years after the client is discharged.

CODAP-Client-Oriented Data Acquisition Process.

Commission-The Texas Commission on Alcohol and Drug Abuse.

Consenter-The individual legally responsible for giving informed consent for a client. This may be the client, parent, guardian, or conservator. Unless otherwise provided by law, a legally competent adult is his or her own consenter. Consenters include adult clients, clients 16 or 17 years of age, and clients under 16 years of age admitting themselves for substance abuse counseling under the provisions of the Family Code, §32.004.

Counseling-Assisting an individual or group to develop an understanding of problems, define goals, and plan action reflecting the individual's or group's interest, abilities, and needs as affected by chemical dependency problems.

Counseling session-A scheduled meeting of 30 minutes or longer duration where group, individual, or family counseling is provided.

Counselor-A qualified credentialed counselor or a counselor intern working under direct supervision.

Counselor intern (CI)-A person pursuing a course of training in chemical dependency counseling at a regionally accredited institution of higher education or an approved clinical training institution who has been designated as a counselor intern by the institution. The activities of a counselor intern shall be performed under the direct supervision of a qualified credentialed counselor (QCC).

Crisis intervention-Services designed to intervene in situations which may or may not involve alcohol and drug abuse, and which may result in a crisis if immediate attention is not provided. Services include face-to-face individual, family, or group interviews and/or telephone contacts to identify the participant's family's needs.

Cultural awareness and sensitivity training-Training to improve an individual's ability to understand and interact with persons of a different culture. Culture defines the lifestyle of a distinct population and includes values, behavioral norms, and patterns of interpersonal relationships. It may be based on race, ethnicity, religion, age, gender, sexual orientation, or disability.

Documentation-A written record that includes a date and signature and provides authenticated evidence to substantiate compliance with standards, such as minutes of meetings, memoranda, schedules, notices, logs, records, policies, procedures, and announcements.

DSM-IV-The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition-Revised, published by the American Psychiatric Association.

Ensure-To take all reasonable and necessary steps to achieve results.

Evaluation program- Written assessment activities, performed internally or externally, of a program or a service and its staff, activities, and planning process to determine whether program or service goals are met, staff and activities are efficient and effective, and whether or not a program or service has any effect on the problem which it was created to address and/or on the population which it was created to serve.

Exploitation-An act or process to use, either directly or indirectly, the labor or resources of a client for monetary or personal benefit, profit, or gain of another individual or organization.

Family-The parents, brothers, sisters, other relatives, foster parents, guardians, or significant others who perform the roles and functions of family members in the lives of clients/participants.

Financial assistance-A payment mechanism where payment is made based on an approved line item budget.

HIV-Human Immunodeficiency Virus.

Intervention counseling-The process of assisting individuals, families, and groups to identify, understand, and resolve issues and problems related to substance abuse in order to intervene in problem situations and high risk behaviors associated with substance abuse which, if not addressed, may escalate to substance abuse or severe impairment.

Life skills training-A formalized program of training, based upon a written program description, to assist the client in acquiring personal habits, attitudes, values, and social interaction skills that will enable the client to function effectively and/or become gainfully employed.

It includes instruction in communication, stress management, problem solving, daily living, and decision making.

Neglect-Actions resulting from inattention, disregard, carelessness, ignoring, or omission of reasonable consideration that caused, or might have caused, physical or emotional injury to a client. Examples of neglect include, but are not limited to, failure to provide adequate nutrition, clothing, or health care; failure to provide a safe environment free from abuse; failure to maintain adequate numbers of appropriately trained staff; failure to establish or carry out an appropriate individualized treatment plan; and any other act or omission classified as neglect by the Texas Family Code, §261.001.

Offer-To make available.

OMB-Office of Management and Budget.

Outcome-The impact on the system or client/participant served.

Prevention-A proactive, inclusive process which seeks the strengthening and empowerment of individuals, families, and communities to create conditions that promote health and well-being by enhancing resiliency and protective factors.

Program-A system of service delivery consisting of a specific type of service delivered to a specific population as identified in the proposal.

Protective factors-Those characteristics within social systems, such as family, schools, peer groups, that foster resiliency and include high expectations, caring and support, and the opportunity to be involved.

Provide-To perform or deliver.

Provider-A distinct legal entity with an administrative and functional structure organized to deliver substance abuse services.

Qualified credentialed counselor (QCC)- A licensed chemical dependency counselor or one of the professionals listed below who can demonstrate two years of chemical dependency counseling experience or one year of chemical dependency counseling experience and 90 clock hours (six semester hours) of chemical dependency training including the 12 core functions from an accredited college or university or an education provider approved by the commission. Documentation shall be available upon request. The following professionals are eligible to serve as QCCs:

- (A) licensed professional counselor (LPC);
- (B) licensed master social worker (LMSW);
- (C) licensed marriage and family therapist (LMFT);
- (D) licensed psychologist;
- (E) licensed physician;
- (F) certified addictions registered nurse (CARN);
- (G) licensed psychological associate; and
- (H) advance practice nurse recognized by the Board of Nurse Examiners as a clinical nurse specialist or nurse practitioner with a specialty in psyche-mental health (APN-P/MH).

Staff-Individuals hired directly by a provider to provide services for the provider in exchange for money or other compensation.

STDs-Sexually transmitted diseases.

Substance abuse- The use of one or more drugs, including alcohol, which significantly and negatively impacts one or more major areas of life functioning.

TAC- Texas Administrative Code.

Treatment (chemical dependency)- A planned, structured, and organized program designed to initiate and promote a person's chemical-free status or to maintain the person free of illegal drugs.

Unit cost-A payment mechanism in which a specified rate of payment is made in exchange for a specified unit of services.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mark S. Smock

Deputy for Finance Administration

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Subchapter B. Organizational

40 TAC §§144.21-144.29, 144.31-144.34, 144.41-144.44, 144.51-144.54, 144.61-144.65, 144.71-144.74

The Texas Commission on Alcohol and Drug Abuse adopts the repeal §§144.21-144.29, 144.31-144.34, 144.41-144.44, 144.51-144.54, 144.61-144.65, and 144.71-144.74, concerning organizational requirements for funded providers, without changes to the proposed text as published in the June 24, 1997 issue of the *Texas Register* (22 Tex Reg 6011).

These sections are repealed to allow adoption of new funding rules, and the repeal will delete obsolete language.

These sections establish general standards and detail requirements regarding organizational chart, award acceptance, governing board, restrictions on the use of funds, funding requirements, tobacco legislative mandates, community support, linkages and written agreements, HIV workplace guidelines and training, HIV confidentiality guidelines, HIV record keeping systems, HIV counseling and education in treatment, amendments to the award, organizational and personnel changes, retention of records, confidentiality of records, requirements for subcontracting, use of the commission logo and slogan, complaints, central file, conflict of interest, non-collusion, remuneration, franchise taxes, oral and written agreements, target population, receipt of goods and services, publications and products produced, and limiting barriers.

No comments were received regarding adoption of the repeal.

The repeals are adopted under the Texas Health and Safety Code, §461.012(15), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the repealed sections is the Texas Health and Safety Code, Chapter 461.

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Subchapter B. Contract Administration

40 TAC §§144.101-144.107, 144.121-144.124, 144.131-144.133, 144.141, 144.142

The Texas Commission on Alcohol and Drug Abuse adopts new §§144.101-144.107, 144.121-144.124, 144.131-144.133, 144.141, and 144.142, concerning contract administration for service providers funded by the commission, with changes to the proposed text as published in the June 24, 1997, issue of the *Texas Register* (22 TexReg 6012).

The new rules are adopted to replace existing rules for funded providers, which are being repealed. This subchapter has been retitled. Throughout the text, the term "organization" has been replaced with the term "provider". Section 144.121 has been revised to include reference to the Code of Federal Regulations as well as Office of Management and Budget circulars and to delete redundant references. Section 144.124 has been revised to reflect proposed changes in the Uniform Grant and Contract Management Standards regarding indirect cost. In §144.131 and §144.132, the threshold for equipment has been lowered from \$5,000 to \$1,000.

These rules describe procedures for award acceptance, amendments, and organizational and personnel changes. They also describe the matching requirement for prevention awards, the order of legal precedence, payment requests, reporting requirements, application of the Office of Management and Budget Circulars, and restrictions on double billing. In addition, the proposal includes requirements related to indirect costs, expenditures requiring prior approval, equipment and supplies, travel, procurement, and subcontracting.

The commission received comments from the Association of Substance Abuse Service Providers of Texas, Christian Farms/Treehouse, Inc., and a number of individuals.

Comment: The changes in timelines makes the contracting process more feasible and realistic.

Response: The commission agrees with this comment.

Comment: TCADA supports the current version of §141.101(b) which adds "or the date the provider is notified by the Commission, whichever is later". It is believed that TCADA, as a regulatory agency, should have a responsibility to monitor and

inform contractors of state and federal changes that effect their contracts with TCADA.

Response: The commission agrees that it has the responsibility to monitor and inform contractors of state and federal changes that affect their contracts with TCADA. This language was removed because we do not have the authority to change the date a statute or regulation takes effect.

Comment: The clarification of the required purchasing procedures is appreciated.

Response: The commission has tried to make the rules easier to understand.

The new sections are proposed under the Texas Health and Safety Code, Title 6, Subtitle B, §461.012(15), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the proposed rules is the Texas Health and Safety Code, Title 6, Subtitle B, Chapter 461.

§144.101. Contract Acceptance.

(a) To execute a contract, the provider shall submit an original acceptance notice signed by the chief executive officer, chief financial officer, and board chair within 45 calendar days of the contract's postmark date. A copy of the board minutes documenting board acceptance of the terms and conditions of the contract shall be submitted within 90 calendar days of the postmark date.

(b) Changes in state or federal laws and regulations may affect contract provisions. Any modifications resulting from such changes are automatically made part of the contract and go into effect on the date set by the law or regulation.

(c) The provider shall have insurance or other provisions to ensure that assets purchased with commission funds will be replaced if lost, destroyed, damaged, or stolen.

(d) The provider shall maintain employee bonding for the executive director and the chief financial officer.

§144.102. Amendments.

(a) To amend the terms and conditions of the contract, the provider shall submit a written request to the commission.

(b) No amendment is valid unless it has been approved in writing by the commission.

(c) A provider may not implement changes that substantially affect the funded program in the following areas without written approval from the commission:

- (1) the catchment area designated in the contract;
- (2) scope or objectives of the program, including the program design, target population, or approved services/activities; or
- (3) items of cost that require prior approval (see §144.131 of this title (relating to Expenditures Requiring Prior Approval)).

§144.103. Organizational and Personnel Changes.

The provider shall notify the commission in writing within ten business days of:

(1) changes in the provider's legal name, address, telephone number, or legal status; and

(2) changes in the following personnel:

(A) certifying representative;

(B) board chair;

(C) executive director;

(D) financial officer;

(E) project director;

(F) contact person; and

(G) any other individuals identified as key personnel in the application.

§144.104. Matching Prevention Awards.

(a) Unless waived in writing by the commission, all providers funded to provide prevention services shall contribute 5.0% of the award amount expended in matching funds.

(b) Match shall comply with requirements found in the applicable Office of Management and Budget (OMB) circulars (as stated in §144.121 of this title (relating to Application of (OMB) Circulars)).

§144.105. Legal Precedence.

Providers shall follow this order of legal precedence:

(1) federal and state laws (including, but not limited to the federal block grant found at United States Code, Title 42, §300x);

(2) rules adopted by the commission and applicable federal regulations;

(3) terms and conditions of the contract;

(4) the request for proposals; and

(5) the application.

§144.106. Payment Request.

(a) Payments shall be made only when the contract has been fully executed.

(b) To be eligible for payments, the provider must comply with provisions of the contract, rules, policies, and procedures of the commission, and other applicable state and federal laws and regulations.

(c) The commission may withhold payment if the provider is not in compliance with commission requirements, which include:

(1) rules adopted by the commission; and

(2) terms and conditions in the contract.

(d) The commission shall not reimburse treatment services provided at an unlicensed site if the site is required to have a license.

(e) Providers paid through the financial assistance payment mechanism who want to receive monthly cash advances must submit the completed method of payment selection form to the commission.

(f) Payment may only be requested one month in advance.

(g) If a request for advance payment exceeds the limit established by the commission, the provider must submit documentation that justifies the need for additional funds.

(h) The provider shall minimize the time between disbursement of funds by the commission and expenditure of funds by the program. The commission may reduce or reject payment if the Financial Status Report or other documentation shows the program has commission funds on hand.

(i) Reimbursements must be requested at least quarterly. Final payment must be requested within 90 days after the end of the budget period.

(j) Payment requests shall be accurate and submitted in the format required by the commission, and certified by the provider's authorized representative (specified in the contract).

§144.107. Reporting.

(a) The provider shall submit all reports as required by commission rules, the contract, and applicable instruction manuals. Reports shall be submitted in the specified form, manner, and timeframe.

(b) The provider shall submit all performance reports, financial reports, and requests for payment through the designated electronic interface system. When equipment problems prevent electronic submission, the provider shall fax or mail paper copies to the commission. The provider's authorized official or designee specified in the Electronic Forms Signature Agreement is responsible for the completeness and accuracy of the data.

(c) The provider shall acquire and maintain the equipment and software needed for the electronic interface system.

(d) The provider shall establish adequate internal controls, security, and oversight for the approval and transfer of complete and accurate information.

§144.121. Application of OMB Circulars.

(a) Expenditures and administration of commission and match funds shall follow guidelines for reasonableness, allowability, and administration according to the cost principles and administrative requirements for the appropriate organizational structure as specified below:

(1) state and local governments or Indian Tribal governments shall comply with cost principles found in the Uniform Grant and Contract Management Standards;

(2) not-for-profit providers shall comply with cost principles found in the Office of Management and Budget (OMB) Circular A-122 and administrative requirements found in the Office of Management and Budget Circulars Circular A-110 (with changes incorporated as the Code of Federal Regulations, Title 45, Part 74);

(3) educational organizations shall comply with cost principles found in OMB Circular A-21 and administrative requirements found in OMB Circular A-110; (with changes incorporated as the Code of Federal Regulations, Title 45, Part 74);

(4) commercial organizations shall comply with cost principles found in Code of Federal Regulations, Title 48, Part 31, and administrative requirements found in OMB Circular A-110 (with changes incorporated as the Code of Federal Regulations, Title 45, Part 74); and

(5) hospitals shall comply with cost principles found in the Code of Federal Regulations, Title 45, Part 74, and administrative requirements found in OMB Circular A-110.

(b) All references in the circulars to "Federal" or "Federally" shall be expanded to read "Federal or State" or "Federally or State", as applicable. References to "recipient" shall be expanded to read "recipient, contractor, or subcontractor".

(c) The provider shall also comply with requirements and restrictions found in the federal block grant, found at United States Code, Title 42, §300x.

§144.122. Double Billing.

A provider shall not bill and receive payment in excess of actual costs from more than one entity for the same service at the same time for the same client. The total amount paid to a provider shall not exceed the actual costs of providing the services, either by client or in the aggregate. If double billing generates revenue that exceeds actual costs, the revenue shall be treated as program income in accordance with §144.123 of this title (relating to Program Income).

§144.123. Program Income.

(a) Providers shall separately record and report all program income directly generated through the portion of a program or activity funded by the commission.

(b) The program may charge reasonable fees for commission-funded services or activities provided:

(1) the resulting income is used according to applicable regulations; and

(2) an otherwise eligible applicant is not refused commission-funded treatment for inability to pay.

§144.124. Indirect Cost.

(a) In order to charge indirect costs, a provider must submit:

(1) an indirect cost rate approved by the provider's cognizant agency;

(2) a cost allocation plan; or

(3) notice that the provider will use an indirect cost rate of 10% as provided in the Uniform Grant and Contract Management Standards (UGCMS). The notice must include supporting documentation to show the direct salary and wage costs of providing the service (excluding overtime, shift premiums, and fringe benefits). This option shall be available only if included in UGCMS.

(b) If the provider uses a cost allocation plan, the plan shall be submitted with the budget plan for advance approval.

(1) The plan shall include a detailed explanation and itemization of which costs are included as direct and which costs are allocated as indirect.

(2) The plan shall set forth the formula or basis for distributing shared (indirect) costs to a cost center.

(3) Supporting documentation for the plan shall include:

(A) the basis upon which costs are allocated;

(B) the rationale for the basis selected; and

(C) the relevance to the commission-funded program.

§144.131. Expenditures Requiring Prior Approval.

Prior approval is required for certain costs charged to the commission contract or reported as program income or match. Costs that are allowable only with prior approval from the commission include:

(1) Equipment. Items used solely for the delivery of funded substance abuse services which have a unit price of \$1,000 or more and a useful life of more than one year.

(2) Remodeling. Work costing \$5,000 or more which is required to change the interior arrangements or other physical characteristics of an existing facility, or to install equipment so that the facility may be used more effectively.

(3) Contractual services. Contracting out, subgranting, or otherwise obtaining the services of a third party to perform activities which:

- (A) are central to the purposes of the contract; or
- (B) cost \$5,000 or more.

(4) Transfers. Any transfer among direct cost categories when year-to-date transfers exceed or are expected to exceed 10% of the total approved budget.

(5) Other. Items requiring prior approval in accordance with the appropriate Office of Management and Budget (OMB) circular.

§144.132. Equipment and Supplies.

(a) Equipment includes all tangible personal property that costs \$1,000 or more per unit and has a useful life of more than one year.

(b) Supplies include all materials and other expendable property includes property needed to carry out a contract that costs less than \$1,000.

(c) The provider shall conduct an annual physical inventory of all equipment purchased with commission funds. The inventory shall conform with standards found in the applicable Office of Management and Budget (OMB) circular.

§144.133. Travel.

(a) Expenses for transportation, lodging, meals, and related items are allowable when they are incurred by an employee or volunteer on official business which is directly attributable to the contract or required for administration of the provider.

(b) Costs for lodging, meals, and related items may not exceed federal per diem guidelines. If the provider's policies and procedures establish a lower per diem rate, the lower rate shall apply.

(c) Alcoholic beverages are not allowable travel costs.

§144.141. Procurement.

(a) The provider may use small purchase procurement procedures to obtain services, supplies, or other property costing no more than \$25,000 in total. These rules do not apply to obtaining the services of a professional as defined in Texas Government Code, Chapter 2254.

(1) For any purchase under \$1,000, price or rate quotations are not required.

(2) The provider shall obtain three verbal or written price or rate quotations for any purchase between \$1,000 and \$5,000. Telephone and other verbal quotations must be documented.

(3) The provider shall obtain three written price or rate quotations for any purchase over \$5,000.

(b) The provider shall select the vendor providing the best value and document the rationale for selection.

(c) Purchases over \$25,000 shall comply with requirements found in the applicable Office of Management and Budget (OMB) circular.

§144.142. Subcontracting.

(a) Providers shall not subcontract, assign, or transfer any activity central to the purposes of the contract without prior written approval from the commission.

(b) The provider shall require any approved subcontractor to comply with all provisions of the commission's contract and with applicable laws and regulations.

(c) The relationship between the provider and the subcontractor shall be formalized in a written agreement that is signed by the governing body or legally responsible party of both the provider and the subcontractor.

(d) The provider shall retain sufficient rights and controls to fulfill its contract responsibilities to the commission. Subcontracting does not relieve the funded provider of any responsibility to the commission under the contract.

(e) The provider is responsible for paying subcontractors and shall monitor activities to assure compliance with applicable requirements.

(f) When a contract ends, the provider and each subcontractor shall settle all claims promptly, including those from employees, vendors, and other subcontractors.

(g) When a subcontractor becomes insolvent or otherwise incapacitated, abandons the contract, or is discharged by the funded provider, the funded provider shall notify the commission in writing within three working days if the situation will affect the delivery of needed services.

(h) Subcontractors must also comply with all applicable state and federal laws and regulations and commission requirements contained in the commission's rules. These specifically include the audit requirements of Office of Management and Budget (OMB) Circular A-133 if applicable, and all other OMB Circulars required in the §144.121 of this title (relating to Application of OMB Circulars).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mark S. Smock

Deputy for Finance Administration

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For further information, please call: (512) 349-6609



Subchapter C. Audits

40 TAC §§144.201, 144.202, 144.211–144.216

The Texas Commission on Alcohol and Drug Abuse adopts new §§144.201, 144.202, and 144.211-144.216, concerning audits of funded providers. Sections 144.201, 144.202, 144.211, 144.212, and 144.214-144.216 are adopted with changes to the proposed text as published in the June 24, 1997, issue of the *Texas Register* (22 TexReg 6015). Section 144.213 is adopted without changes and will not be republished.

The new rules are adopted to replace existing rules for funded providers, which are being repealed. Throughout the text, the term "organization" has been replaced with the term "provider". Section 144.201 has been revised to delete reference to removing original records from the provider's location.

These rules explain the commission's audit process and describe the requirements for obtaining an independent financial audit and submitting it to the commission for review. These rules are being proposed to establish methods for monitoring provider compliance.

The commission received comments from the Association of Substance Abuse Service Providers of Texas, Christian Farms/Treehouse, Inc., the Serenity Foundation of Texas, and a number of individuals. Most of the comments related to a paragraph in §144.201 which stated that records must be made available for removal from the provider's site.

Comment: Removing records from the property is in violation of the Code of Federal Regulations, Title 42, Part 2, and violates client confidentiality. Also, the provider is the legal custodian of the records, and must be able to produce original records for other audits if needed. Change language to state that "copies shall be made available for removal" or "Any documents which need to be removed will be taken as copies at the expense of the commission."

Response: The commission has deleted language about removing original records from the premises because we are confident that providers will fully cooperate with requests to duplicate records needed for audit purposes. The confidentiality statutes and regulations do, however, give the commission explicit authority to remove client records from the program site. Code of Federal Regulations, Title 42, §2.53 states that records containing patient-identifying information may be copied or removed from program premises by any federal, state, or local governmental agency which provides financial assistance to the program or is authorized by law to regulate its activities.

This section also has strict requirements that protect client confidentiality when records are copied or removed for audit or evaluation activities. Specifically, the information may be used only to carry out the audit or evaluation and may only be disclosed back to the program from which it was obtained. In addition, the agency must maintain the patient-identifying information in accordance with specified security requirements and destroy all patient-identifying information upon completion of the audit or evaluation.

The commission takes its responsibility for protecting client information very seriously. Client-identifying information is never cited in an audit report or any other document subject to public examination, and internal procedures ensure that staff access is limited to those individuals directly involved with the audit.

Comment: The commission needs to bear some responsibility to respond in a timely manner (30-60 days) to the organization who has corrected deficiencies. Non-profits do not have the reserves to survive past this time frame.

Response: The commission accepts this responsibility and is committed to responding to providers in a timely manner. We believe that the internal agency procedures are a more appropriate vehicle for specifying time frames to be followed by Texas Commission on Alcohol and Drug Abuse staff.

Comment: In the audit process, include a provision that will allow/encourage auditors to acknowledge strengths, uniqueness and value-added features of individual programs. Give auditors the flexibility to weigh with less exactitude to allow for creativity and thinking outside the box. Look at the program as a whole.

Response: The nature of compliance generally is to note those areas that need some type of corrective action. Providers have asked for compliance reports to include positive aspects of the program, and the Compliance Branch will work toward this goal in the future. In general, however, the provider will receive feedback regarding strengths, unique characteristics, and value-added features from Program Services staff. While program compliance is charged with ensuring compliance with minimum standards, program services works with programs to achieve even higher levels of quality. The approach of the audit team on a full compliance visit is to look at the whole program (program, administrative, and fiscal) and to consider whether the intent of the rule has been complied with.

The new sections are adopted under the Texas Health and Safety Code, Title 6, Subtitle B, §461.012(15), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the new rules is the Texas Health and Safety Code, Title 6, Subtitle B, Chapter 461.

§144.201. Compliance Review.

(a) All commission-funded providers, regardless of the level of funding, are subject to periodic reviews by the commission for compliance with applicable federal, state and commission statutes and regulations and contract requirements.

(b) The commission shall determine the extent of the review, which shall be limited to services funded by the commission.

(c) The commission may conduct a scheduled or unannounced on-site inspection or request materials for review.

(d) The applicant shall allow commission staff to access the facility's grounds, buildings, and records and to interview members of the governing body, staff, and clients.

(e) The provider shall allow commission staff to examine all property and examine or copy all books, recordings, client records, and documents related to the contract or a commission requirement on or off the premises.

§144.202. Organization Response.

(a) The provider will be notified in writing of any noncompliance with federal, state, and commission regulation identified by the commission in the form of a draft audit.

(b) The provider shall respond to the draft audit and the deficiencies (if any) and submit a plan of corrective action (if necessary) to the commission within 30 calendar days of the postmark date.

(c) The corrective action plan shall include:

(1) the title(s) of the person(s) responsible for the corrective action;

(2) the corrective action planned; and

(3) the anticipated completion date.

(d) If the provider believes corrective action is not required for a noted deficiency, the response shall include an explanation and specific reasons.

(e) The provider's replies and corrective action plan (if any) shall become part of the final audit report.

(f) The provider shall correct deficiencies identified in the final audit report within a reasonable period of time.

§144.211. Independent Financial Audit.

(a) Providers (except for-profit entities) that expend a total amount of federal awards (from the commission and other funding sources) of at least \$300,000 during their fiscal year must have a single audit or program-specific audit in accordance with the requirements of the Single Audit Act Amendments of 1996 and other governance guiding the program.

(1) If the funds are expended under more than one federal program the provider shall have a Single Audit.

(2) If the funds are expended under only one federal program and the provider is not subject to laws, regulations, or federal contracts that require a financial statement audit, the provider may elect to have a program-specific audit.

(3) The provider shall comply with the single audit requirements of Office of Management and Budget (OMB) Circular A-133.

(b) Providers shall inform the commission in the contract if they expect to spend \$300,000 or more in total federal awards from all funding sources.

(c) Providers (including for-profit entities) expending a total amount of state funds from the commission of at least \$300,000 during their fiscal year must have a program-specific audit that meets the standards in OMB Circular A-133. If the provider is already required to have a single audit because of federal funding, an additional program audit is not required.

(d) Providers that expend less than \$300,000 in federal funds from all sources and less than \$300,000 in state funds from the commission during their fiscal year are not required to have an audit.

§144.212. Auditor Qualifications.

(a) The audit shall be conducted by an independent certified public accountant (CPA).

(b) The selected auditor must meet the requirements of the Government Auditing Standards (GAS) and be licensed in the state in which the audit is performed.

(c) Providers who use outside CPA firms to perform bookkeeping or accounting services shall not use the same CPA firm for audit services.

§144.214. Audit Submission.

(a) The provider shall submit two copies of all required audit documentation to the commission, including:

(1) the audit report;

(2) any separately issued management letters;

(3) management responses as required in §144.215 of this title (relating to Corrective Action Plan); and

(4) the commission's Audit Report Submission Checklist.

(b) Audit documentation must be submitted within 30 calendar days after completion of the audit, and the audit shall be completed no later than one year after the end of the provider's fiscal year-end.

§144.215. Corrective Action Plan.

(a) The provider shall prepare a response that includes a corrective action plan for each deficiency noted in the independent audit report and management letter.

(b) Management responses shall express agreement or disagreement with the noted deficiencies. Disagreement shall include additional support, evidence, or justification of the provider's position.

(c) The corrective action plan shall include:

(1) the title(s) of the person(s) responsible for the corrective action;

(2) the corrective action planned; and

(3) the anticipated completion date.

(d) If the provider believes corrective action is not required for a noted deficiency, the response shall include an explanation and specific reasons.

§144.216. Commission Review of Audit Report.

(a) After reviewing the audit, the commission will send the provider an initial resolution letter requesting a response to any administrative findings or deficiencies.

(b) The provider shall respond to the commission within 14 calendar days of the postmark date.

(c) If further action is required, additional resolution letters will request specific actions or responses. The provider must respond to these requests within the given timeframes.

(d) When the review process indicates that no further action is needed, the commission will mail an acceptance letter to the provider.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mark S. Smock
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Subchapter C. Fiscal

40 TAC §§144.211–144.215, 144.221–144.227, 144.231–144.233, 144.235–144.239, 144.241–144.245, 144.251–144.256, 144.261–144.265, 144.271, 144.281–144.283

The Texas Commission on Alcohol and Drug Abuse adopts the repeal of §§144.211-144.215, 144.221-144.227, 144.231-144.233, 144.235-144.239, 144.241-144.245, 144.251-144.256, 144.261-144.265, 144.271, and 144.281-144.283, concerning fiscal requirements for funded providers, without changes to the proposed text as published in the June 24, 1997 issue of the *Texas Register* (22 TexReg 6017).

These sections are repealed to allow adoption of new funding rules, and the repeal will delete obsolete language.

These sections establish general principles and describe requirements for financial management, accounting systems, internal controls, budget controls, cost allocation plan, payments, methods of payment, cash management, matching, program income, revisions of grant awards, allowable cost criteria, direct costs, indirect costs, expenditures requiring commission's prior approval, unallowable costs, prohibitions against billing more than one entity, minor remodeling, major medical equipment, general documentation requirements, personnel documentation, travel documentation, other documentation, federal and state tax requirements, property standards, real property, equipment, supplies, intangible property, insurance coverage, procurement standards, methods of procurement, cost and price analysis, procurement records, subcontract administration and provisions, close-out procedures, termination for convenience, and refunds.

No comments were received regarding adoption of the repeal.

The repeals are adopted under the Texas Health and Safety Code, §461.012(15), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the proposed new sections is the Texas Health and Safety Code, Chapter 461.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter D. Prevention and Intervention

40 TAC §§144.301, 144.311–144.316, 144.321, 144.322, 144.333, 144.341–144.346, 144.351, 144.352, 144.355, 144.356, 144.361

The Texas Commission on Alcohol and Drug Abuse adopts the repeal of §§144.301, 144.311-144.316, 144.321, 144.322, 144.333, 144.341-144.346, 144.351, 144.352, 144.355, 144.356, and 144.361, concerning requirements for funded prevention and intervention providers, without changes to the proposed text as published in the June 24, 1997 issue of the *Texas Register* (22 TexReg 6018).

These sections are repealed to allow adoption of new funding rules, and the repeal will delete obsolete language.

These sections describe applicability and general provisions and detail requirements regarding annual plan, staffing and special training, program evaluation, annual evaluation, participant rights, advocacy, family services, continuum of care, prevention education and skills training, alternative activities, problem identification and referral, information dissemination, community-based process, environmental and social policy, requirements for HIV early intervention services, HIV outreach, councils on alcohol and drug abuse requirements, infant primary prevention programs and infant intervention programs, and select performance measures.

No comments were received regarding adoption of the repeal.

The repeals are adopted under the Texas Health and Safety Code, §461.012(15), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the repealed sections is the Texas Health and Safety Code, Chapter 461.

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Subchapter D. Organization

40 TAC §§144.311–144.313, 144.321–144.325

The Texas Commission on Alcohol and Drug Abuse adopts new §§144.311-144.313 and §§144.321-144.325, concerning organizational requirements for providers funded by the commission. Sections 144.311, 144.312, and 144.321-144.325, are adopted with changes to the proposed text as published in the June 24, 1997, issue of the *Texas Register* (22 TexReg 6019). Section 144.313 is adopted without changes and will not be republished.

The new rules are adopted to replace existing rules for funded providers, which are being repealed. The term "provider" has been substituted for "organization" and "program" throughout the text when appropriate.

These rules describe general provider responsibilities and requirements related to the organization's structure, governing board, HIV policies, and records. They also place restrictions on use of the commission's logo and slogan, require the provider to limit barriers, and mandate a complaint process and certain reports to the commission. These rules are being proposed to ensure funded providers have appropriate organizational components to administer the award.

The commission received comments from the Association of Substance Abuse Service Providers of Texas, the Serenity Foundation of Texas, and a number of individuals.

Comment: Eliminating the mandated training requirements for Board members is an improvement.

Response: The commission has tried to make the rules less burdensome for providers.

Comment: Please remove the requirement for board training on cultural sensitivity. The requirements is burdensome and of questionable impact on the real problem.

Response: This requirements remains. The need for cultural awareness and sensitivity is particularly important because most boards do not reflect the diverse cultures that make up a large portion of the clients served. The commission tries to address this problem in a variety of ways, and has an advisory committee to help identify steps that can be taken to promote more culturally appropriate programs. One of the recommendations of this group was to require staff and board members to receive training in cultural awareness and sensitivity. While training alone will not ensure cultural sensitivity, it does heighten awareness and focus attention on the need for culturally appropriate services. This requirement also underscores the commission's position that this is an important issue.

Comment: In relation to limiting barriers, the issues arises about discrimination vs. the appropriateness of the program to the client; how does this rule apply to culturally specific programs. And what if the program is not equipped to handle the severity of the mental illness?

Response: The commission requires providers to identify a specific target population and design the program to meet the needs of that target population. The program cannot, however, arbitrarily exclude individuals who do not belong to the target population. Commission-funded programs must provide equal access to all applicants and make reasonable accommodations to provide services. Potentially difficult situations must be evaluated individually.

The new sections are adopted under the Texas Health and Safety Code, Title 6, Subtitle B, §461.012(15), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the new rules is the Texas Health and Safety Code, Title 6, Subtitle B, Chapter 461.

§144.311. General Requirements.

Funded providers shall establish and maintain effective internal programmatic and financial controls to ensure:

- (1) commission-funded programs are operated efficiently and effectively;
- (2) the provider maintains compliance with other funding and regulatory agencies;
- (3) appropriate controls are in place to safeguard assets;
- (4) commission funds are properly spent;
- (5) commission funds are properly accounted for; and
- (6) clients/participants receive appropriate services.

§144.312. Organizational Structure.

(a) All providers shall maintain a current chart of the organization's structure.

(b) The provider shall maintain a current manual that includes all policies and procedures required by the commission.

(1) Policies shall be approved by the board, reviewed annually, and revised as needed.

(2) Procedures shall be approved by the executive director, reviewed annually, and revised as needed.

(3) The provider shall require each employee to read the policies and procedures applicable to the position.

(4) Updated copies of the manual shall be convenient and readily available to all staff.

§144.321. HIV Policies.

The provider shall adopt and implement the commission's workplace guidelines concerning individuals with AIDS and HIV infection, as required by the Americans with Disabilities Act and the Texas Health and Safety Code, §85.113.

§144.322. Records.

(a) The provider shall protect client/participant records and client/participant-identifying information from unauthorized disclosure in accordance with the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, Code of Federal Regulations, Title 42, Part 2.

(b) Personnel files shall contain:

(1) a copy of the current job description signed by the employee;

(2) application or resume with documentation of required qualifications;

(3) documentation that required credentials were verified with the credentialing body;

(4) annual performance evaluations;

(5) personnel data that includes date hired, rate of pay, and documentation of all pay increases and bonuses.

(c) If a provider closes business operations, it shall ensure that records relating to the contract are securely stored and accessible for at least three years. The provider shall provide the commission with the name and address of the responsible party.

§144.323. Commission Logo and Slogan.

The provider may not use the commission's logo and slogan on publications or video material unless the commission has given written approval.

§144.324. Limiting Barriers.

(a) The provider shall not discriminate against an individual or group based on race, religion, ethnicity, country of origin, age, disability (including mental illness), sexual orientation, or gender. The provider shall also ensure that no person or group of persons is restricted from receiving the same services or the same quality of services available to others.

(b) The provider shall make all facilities and programs accessible to persons with disabilities as required by the Americans with Disabilities Act. The provider shall maintain documentation that it has conducted a self-inspection to evaluate compliance and implemented a corrective action plan to address identified deficiencies.

§144.325. Complaints and Reports.

(a) Providers shall have written policy and procedures for handling complaints from participants of funded programs.

(b) The provider shall display a sign informing the public of the policy and procedures on complaints. The sign shall be prominently displayed at all times and shall provide notice of the commission's compliance division and its mailing address and toll-free phone number.

(c) The provider shall report all allegations of abuse, neglect, and exploitation to the commission in writing within 24 hours, and submit documentation within two working days. The provider shall investigate the allegation, take appropriate action, and maintain documentation of the investigation and resulting actions.

(d) The provider shall not retaliate against anyone who reports a violation or cooperates during an investigation or related activity.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter E. Prevention

40 TAC §§144.401, 144.411-144.415, 144.431-144.435, 144.441-144.448

The Texas Commission on Alcohol and Drug Abuse adopts the repeal of §§144.401, 144.411-144.427, 144.431-144.435, 144.441-144.444, 144.451, and 144.452, concerning requirements for providers funded treatment providers, without changes to the proposed text as published in the June 24, 1997 issue of the *Texas Register* (22 TexReg 6020).

These sections are repealed to allow adoption of new funding rules, and the repeal will delete obsolete language.

These sections describe applicability describe requirements regarding continuum of care, family services, medically indigent status and ability to pay, admission, assessment, waiting list, interim services, facility capacity system, provisions for intravenous drug use treatment providers, provisions for pregnant females, service area, diagnosis, client chart documentation, client absence from treatment, level/phase system, relapse prevention education, group size, general treatment services, Level I service requirements, Level II service requirements, Level III service requirements, Level IV service requirements, specialized treatment services for women, modified therapeutic communities, court commitment services, pharmacotherapy services, self evaluation, and select performance measures.

No comments were received regarding adoption of the repeal.

The repeals are adopted under the Texas Health and Safety Code, §461.012(15), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the proposed new sections is the Texas Health and Safety Code, Chapter 461.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter E. Treatment

40 TAC §§144.401, 144.411-144.427, 144.431-144.435, 144.441-144.444, 144.451, 144.452

The Texas Commission on Alcohol and Drug Abuse adopts new §§144.401, 144.411-144.415, 144.431-144.435, and 144.441-144.448, concerning program requirements for prevention programs funded by the commission. Sections 144.401, 144.414, 144.415, 144.431, 144.435, 144.442, 144.447, and 144.448 are adopted with changes to the proposed text as published

in the June 24, 1997, issue of the *Texas Register* (22 TexReg 6021). Sections 144.411-144.413, 144.432-144.434, 144.441, and 144.443-144.446 are adopted without changes and will not be republished.

The new rules are adopted to replace existing rules for funded providers, which are being repealed. The term "organization" has been replaced with the term "provider". In 144.401, the reference to intervention services was removed. In §144.415, text has been revised to clarify that the confidentiality regulations apply to all programs that provide services to identified individuals. Section 144.431 has been expanded to include screening for tuberculosis and sexually transmitted diseases. In 144.435(b)(4), the word "and" was added between "environmental" and "social." Section 144.442 has been reworded to make it more appropriate for children who do not access community services independently. The title of §144.447 has been changed from "Intervention Services" to "Additional Services", and the requirement for specific services has been eliminated. Language deleted when published was added to §144.448.

These rules establish minimum standards for program design and implementation, self-evaluation, performance and activity measures, and participant rights. They also describe required components of special programs, including HIV early intervention programs, HIV outreach services, prevention resource centers, infant primary prevention and intervention programs, and core council services. Minimum standards are also established for a range of program components, including information dissemination, prevention education and skills training, alternative activities, problem identification and referral, community-based process, environmental and social policy, intervention services, and assessment for treatment. These rules are proposed to ensure that prevention programs funded by the commission provide appropriate services.

The commission received comments from the Association of Substance Abuse Service Providers of Texas, Rainbow Days, Inc., and a number of individuals.

Comment: The program planning process will need further explanation through the compliance manual. Commenter does not oppose the intent of establishing a process for monitoring, evaluating, and adjusting programs during the course of a three-year cycle, but has concern that it remains a practical, useful process and not develop into a complicated exercise.

Response: The commission agrees fully that this should not result in a complicated exercise or additional paperwork. The intent of this rule is to help providers use existing processes and information more effectively.

Comment: Is §144.415 appropriate application of the Code of Federal Regulations, Title 42, Part 2? The confidentiality rules usually are meant to protect alcoholic and addict patients, not alcohol and drug users.

Response: Although the regulations use the term "substance abusers", the authorizing statute clearly states that the regulations are intended to protect any individual who may be stigmatized through their participation in or association with a substance abuse program, even if the individual is not actually abusing or even using illicit drugs. The proposed rules has

been revised to specify that it applies to all programs that provide services to identified individuals.

Comment: Commenter has concerns about all prevention programs being required to provide information about HIV and other infectious diseases to all children they serve through Information Dissemination. To simply hand a child a brochure, without accompanying discussion, could be confusing. And not all program designs allow for discussion of these topics. Also, since prevention services are provided in a variety of settings, there are different regulations concerning the discussion of these topics. It is suggested that the wording be changed to "may" instead of "shall" and that the appropriateness of the dissemination of this information be left to the discretion of the service provider.

Response: Adolescents are identified as a population with one of the highest incidences of newly acquired HIV infection. The goal of this rule is to ensure that every opportunity is given for the child at risk to gain the information and skills necessary to avoid life threatening diseases which are preventable. The commission agrees that this information must be provided in a way that is appropriate for the age group involved, and many resources are available for providers to use. For school-based programs, many school districts offer specific curricula, appropriate to all age groups (such as, graduated materials). If a child is already receiving HIV and other communicable disease information from a school-based curriculum, then the prevention programs' ideal position would be to avail themselves as a resource for answering any questions a child in a prevention program might have. If the topic is never brought up or program staff is not trained, the child would not know to use the program as a resource.

Comment: A child may have many barriers to accessing community services by virtue of their age and dependence on their parents/guardians. Having information about who to ask for help and giving permission to do so may be different from helping participants "develop skills". It is suggested that the wording in §144.442 be changed to something like "help participants gain knowledge and or/skills needed to access assistance or help with a problem".

Response: The commission agrees and has revised the rule.

Comment: Confusion exists about whether alternative activities and other strategies can be funded as stand alone programs. If it can be funded as a stand alone, it is suggested that a requirement be placed to build in an education and skill building component.

Response: The program design must be based on a logical, conceptually sound framework that takes into consideration available research and evaluation data. Such data suggest that isolated strategies are generally not as effective as more comprehensive programs, so it is unlikely that the commission would fund alternative activities as a stand-alone program. The provider is required to implement whatever strategies are necessary to carry out the program design.

The new sections are adopted under the Texas Health and Safety Code, Title 6, Subtitle B, §461.012(15), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commis-

sion, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the new rules is the Texas Health and Safety Code, Title 6, Subtitle B, Chapter 461.

§144.401. Applicability.

The rules in this subchapter apply only to funded programs providing prevention services.

§144.414. Select Performance Measurement Process.

(a) The commission shall review compliance with targets at least twice each fiscal year and notify the program in writing if the program failed to achieve the expected level of performance.

(b) The program shall respond to the notice within 30 days from the postmarked date of the notice.

(c) After receiving the response, the commission shall take one of the following actions.

(1) Negotiate a revision of performance measures with final approval from the commission.

(2) Permit a one-time extension of the review period and require submission of a corrective action plan to the commission. The corrective action plan must include the program's method and timeframes for correcting or resolving the noted deficiencies.

(d) In subsequent reviews, if the program fails to satisfactorily resolve any performance measure deficiencies as noted in the commission's review, the commission will implement further corrective action and may impose one or more of the following sanctions:

- (1) designation as a high-risk provider;
- (2) suspension or withholding of payments;
- (3) one-time decrease in the contract amount for the fiscal year;
- (4) permanent decrease in the contract amount; or
- (5) termination of the contract.

§144.415. Participant Rights.

(a) Each provider shall develop and implement a policy and age-appropriate procedures to protect the rights of children, families, and adults participating in a prevention program.

(b) All participants have the right to:

- (1) be free from abuse, neglect, and exploitation;
- (2) be treated with dignity and respect; and
- (3) make a complaint to the program or the commission at any time.

(c) Participants in an indicated program also have the right to:

- (1) a humane environment that provides reasonable protection from harm;
- (2) be informed of the program rules and regulations before participation; and
- (3) accept or refuse services after being informed of services and responsibilities.

(d) When participants receive individualized services in an indicated prevention program, the provider shall inform participants and consenters (if applicable) about:

- (1) program goals and objectives;
- (2) rules and regulations; and
- (3) participant rights.

(e) Programs that provide services to identified individuals shall maintain the confidentiality of participant-identifying information as required by the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, Code of Federal Regulations, Title 42, Part 2.

§144.431. HIV Early Intervention Services.

(a) Programs receiving HIV early intervention funds shall provide comprehensive HIV services that include:

- (1) HIV antibody testing with appropriate pre- and post-test counseling components;
- (2) screening for tuberculosis and sexually transmitted diseases; and
- (3) case management to identify and access appropriate therapeutic measures, including laboratory analyses and medication to monitor and slow down or prevent HIV disease progression.

(b) HIV early intervention services shall be provided to substance abuse treatment clients at the site where they are receiving treatment services, or to individuals identified as chemically dependent, HIV infected, and considering treatment as an option. HIV antibody testing may also be offered to individuals concerned about their risk of infection as a result of substance abuse activity.

(c) HIV early intervention services can be provided only if the client voluntarily gives informed consent. Receiving these services shall not be required as a condition of receiving substance abuse treatment or other services.

(d) Programs shall establish linkages with a comprehensive community resource network of related health and social service providers, receiving referrals from or referring clients to needed services.

§144.435. Core Council Services.

(a) A core council service program shall coordinate and centralize specific core services for the service area defined in the contract.

(b) The program shall provide the following core services as specified in the contract and defined in this chapter:

- (1) information dissemination;
- (2) problem identification (including screening, referral, and follow-up);
- (3) assessment for treatment;
- (4) environmental and social policy; and
- (5) minors and tobacco activities.

§144.442. Prevention Education and Skills Training.

(a) Education and skills training must be designed to affect critical life and social skills and include skill-building and practice.

(b) The activities must include extensive interaction where information is exchanged between the leader and the participants.

(c) Activities shall be based on a written, time-specific curriculum or outline approved by the commission.

(d) Each program that provides this strategy must help participants gain knowledge and/or skills needed to access assistance or help with a problem.

(e) Documentation shall include, as applicable:

- (1) date, time, and duration of activity;
- (2) location of activity;
- (3) staff/volunteers conducting activity;
- (4) purpose and goal of activity;
- (5) number of participants; and
- (6) demographics of participants.

§144.447. Additional Services.

A program may offer additional services to meet the needs of individual participants, such as intervention counseling, crisis intervention, and support group opportunities.

(1) Intervention counseling shall be conducted through confidential face-to-face contacts with participants and/or family members.

(2) The program shall assess the individual's needs and develop a service plan to address the identified needs and the services to be provided.

(3) The program shall document participation and follow-through, including any changes in the participant's status.

(4) The program shall provide information and referrals for participant and family needs that cannot be met by the program.

§144.448. Assessment for Treatment.

(a) A program conducting assessments for treatment shall:

(1) use an assessment tool that is appropriate for the target population;

(2) provide the assessment through a confidential, face-to-face interview; and

(3) make recommendations regarding the individual's treatment needs.

(b) All assessments shall be conducted by qualified credentialed counselors or counselor interns working under appropriate supervision.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Deputy for Finance Administration

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For further information, please call: (512) 349-6609

◆ ◆ ◆
Subchapter F. Treatment

40 TAC §§144.501, 144.511, 144.512, 144.521-144.525, 144.531-144.533, 144.541-144.544, 144.551-144.554

The Texas Commission on Alcohol and Drug Abuse adopts new §§144.501, 144.511, 144.512, 144.521-144.525, 144.531-144.533, 144.541-144.544, and 144.551-144.554, concerning program requirements for treatment programs funded by the commission. Sections 144.511, 144.521, 144.524, 144.525, 144.531, 144.532, 144.544, 144.551, 144.552, 144.553, and 144.554 are adopted with changes to the proposed text as published in the June 24, 1997 issue of the *Texas Register* (22 TexReg 6026). Sections 144.501, 144.512, 144.522, 144.523, 144.533, and 144.541-144.543, are adopted without changes and will not be republished.

The new rules are adopted to replace existing rules for funded providers, which are being repealed. Throughout this subchapter, the term "organization" has been replaced with the term "provider". In 144.511(c), the listing of the information was changed. Section 144.521 has been revised to require consideration of extraordinary expenses during the financial assessment and to add federal poverty guidelines to the list of acceptable criteria. In §144.525, the text has been changed to allow providers to provide interim services indirectly through other organizations. To ensure consistency, §144.531 now references facility licensure standards instead of duplicating language. Individual counseling has been removed from the list of mandatory services in §144.532 because it is now required in facility licensure rules. This section has also been revised to clarify that the limitation on group size does not apply to seminars and other events designed for a large audience. Section 144.544 has been reordered. The definition of abstinence in §144.552 has been expanded. In §144.553, language has been added to provide more flexibility regarding client absences. In 144.554, hyphens were added to a phrase.

These rules establish minimum standards for program design and implementation and self evaluation. They also state requirements related to priority populations, capacity management, interim services, assessments, general service requirements, service enhancements, specialized treatment services for females, court commitment services, pharmacotherapy services, and dual diagnosis programs. Additional requirements relate to performance measures, client billings, and reports of client data. The rules are proposed to ensure that clients receive appropriate services in treatment programs funded by the commission and that the commission has sufficient information about the services provided.

The commission received comments from the Association of Substance Abuse Service Providers of Texas, Christian Farms/Treehouse, Inc., the Serenity Foundation of Texas, and a number of individuals.

Comment: The program planning process will need further explanation through the compliance manual. The program does not oppose the intent of establishing a process for monitoring, evaluating, and adjusting programs during the course of a three-

year cycle, but are concerned that it remains a practical, useful process and not develop into a complicated exercise.

Response: The commission agrees fully that this should not result in a complicated exercise or additional paperwork. The intent of this rule is to help providers use existing processes and information more effectively.

Comment: With an active addiction, financial resources are often drained even though a client may not be classified as indigent. Consideration must be given to a client profile that acknowledges the financial nature of addiction and allows access to treatment before all is lost. Many clients face special hardships that should be considered. Also, many individuals with modest incomes cannot afford treatment even though they are not indigent.

Response: The listed financial criteria allow providers to consider extraordinary expenses and other factors that impact financial status. To make this clear, the commission has added language to the rule stating that the financial assessment should consider documented extraordinary expenses. The list of standard criteria has been expanded to include the federal poverty guidelines.

In addition to determining when a client is eligible for free services, the rules require each program to establish a sliding fee scale, which ensures that clients will not be turned away simply because they have financial resources. Clients who are not eligible for free services will be charged based on their ability to pay.

Comment: Section 144.525 states that the program must provide interim services. The current rule that states providers shall provide access to interim services is supported. Often these services are made available through cooperative arrangements with other agencies. This is a cost effective approach which reduces duplication of services.

Response: The commission agrees and has revised the language.

Comment: Please clarify relation to Federal Drug Administration's (FDA) requirements for interim services.

Response: These requirements for interim services come from the federal block grant. They are consistent with Federal Drug Administration's (FDA) requirements, but FDA requires additional services, including daily dosing for pharmacotherapy clients.

Comment: Group counseling is left out of the list of required services. Was this an oversight or intended? Additionally concern was voiced about the requirement to provide case management. The definition of case management is subject to broad interpretation as it relates to the expected intensity level of case management services. Given current funding levels, there needs to be clarification (possibly in the compliance manual) of what the expectations are.

Response: Most of the services in this list are mandated by the commission's enabling legislation. Individual counseling was included because many programs neglect this important component. Individual counseling is now mandated in the licensure rules, so the commission has deleted it from the final rule. The compliance manual will provide more detailed guidance

on expectations for case management. The general expectation is that a staff person will be responsible for coordinating the client's treatment and providing referral and follow-up with outside organizations as needed. These activities are usually carried out by the client's primary counselor. The rule does not require a separate "Case Manager" position.

Comment: Section 144.532 states that group education sessions, didactic sessions, multi-family groups, and other groups must be limited to a maximum of 32 clients. These sessions should be unlimited where space is adequate.

Response: All of these activities require interaction and cannot be effectively carried out with unlimited number of participants. Language has been added that the rule does not apply to special seminars, speakers, and other events specifically planned for a large audience.

Comment: There is opposition to requiring any additional hours above and beyond those required by licensure rules. Most facilities have other activities which they deem vital to recovery which have not traditionally counted as professional treatment services. These activities are things such as voluntary bible studies, independent study hall, AA/NA meetings, facility graduations and peer led study groups. When the commission adds extra requirements it is often in the non-traditional areas that programs have to cut.

Response: This rule does not require additional professional treatment services. In fact, all of the activities listed above would satisfy this requirement. The intent is to provide some structure and activities during evenings and weekends.

Comment: It seems more appropriate to have requirements for evening and weekend services listed in the RFP as a value-added service instead of requiring it for all programs.

Response: Because so many substance abusers have difficulty using free time appropriately, the commission is not willing to fund programs that provide no structure outside of regular business hours.

Comment: The section on dual diagnosis and clear and removes lingering ambiguity regarding primary diagnosis.

Comment: Please clarify major mental disorder. Is the Mental Health and Mental Retardation priority population a consideration?

Response: This can include clients who are not part of the MHMR priority population. Additional clarification will be provided in the compliance guide.

Comment: A maximum of four days per month (for holding an empty bed for a residential client) is too limiting, especially for Level III programs. This level by design usually affords the client opportunities for weekend passes of varying duration. These leaves are critical to the recovery process because they afford the client the opportunity to address relapse triggers and to utilize independently the sobriety based skills needed to maintain ongoing recovery. In addition, limiting planned leaves to two consecutive days may not be sufficient for maternity leave and/or other special circumstances such as allowing client who live long distances from treatment to return home to begin making continuum of care plans. It is recommended that the

wording not put specific time limitations, but instead require justification for any leaves longer than two consecutive days.

Response: This rule has been revised to allow greater flexibility.

The new sections are adopted under the Texas Health and Safety Code, Title 6, Subtitle B, §461.012(15), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the new rules is the Texas Health and Safety Code, Title 6, Subtitle B, Chapter 461.

§144.511. Program Design and Implementation.

(a) The program design must be based on a logical, conceptually sound framework with the intended result of reducing alcohol, tobacco, and other drug problems. The design should take into consideration current research and evaluation data and effectiveness of comparable programs relative to the needs of the target population.

(b) The program shall develop a written plan for the contract period. The plan shall initially be developed as part of the application process and revised annually on the basis of needs data and results of self-evaluation.

(c) The program shall identify and describe the target population, including specific information about:

- (1) age, gender, and ethnicity;
- (2) patterns of substance use;
- (3) social and cultural characteristics;
- (4) knowledge, beliefs, values, and attitudes; and
- (5) needs.

(d) The program shall identify long-range goals which:

- (1) address identified needs and/or problems; and
- (2) clearly describe behavioral and/or societal changes to be achieved.

(e) The program shall establish objectives for each contract period that are linked to the long range goals. Objectives must:

- (1) be realistic, measurable, and time-specific; and
- (2) include performance measures required in the contract.

(f) The program design shall include key strategies and activities used to achieve program goals and objectives. Each strategy and activity must:

- (1) relate directly to the goals and objectives;
- (2) address identified needs; and

(3) be appropriate for the target population. The program design, content, communications, and materials shall be:

(A) available in the primary language of the target population; and

(B) appropriate to the literacy level, gender, race, ethnicity, sexual orientation, age, and developmental level of the target population.

(g) The program must also develop and implement an annual plan to provide employees with training and continuing education in the program's services. The plan must include cultural awareness and sensitivity training for all employees.

§144.521. Client Eligibility.

(a) The program shall complete and document a financial assessment of each client at admission. When determining a client's ability or inability to pay, the program shall consider documented extraordinary expenses. Unless the program has received written approval from the commission to use alternative financial assessment criteria, the program shall use one of the following:

(1) criteria adopted by the Texas Department of Mental Health and Mental Retardation;

(2) criteria adopted by the Texas Department of Health;

(3) criteria adopted by the Texas Department of Human Services; or

(4) the federal poverty guidelines (with eligibility for free services set at 150%).

(b) The facility shall establish a sliding fee scale that corresponds to the selected financial assessment criteria.

(c) No applicant shall be denied services based only on inability to pay.

(d) Commission funds may be used to provide treatment for any adolescent client, regardless of ability to pay.

§144.524. Facility Capacity System.

(a) Treatment programs shall report available capacity and waiting list information through the commission's facility capacity management system and comply with procedures described in the applicable manual.

(b) A provider with a pharmacotherapy program shall notify the commission through the capacity management system when the program's capacity reaches 90%.

(c) If the system is not operating, the program must submit the information by phone or fax.

§144.525. Interim Services.

(a) When a program does not have capacity to admit an injecting drug user or pregnant female, the program shall make every effort to place the individual in another treatment facility or provide access to interim services.

(b) Interim services shall:

(1) be offered within 48 hours;

(2) continue until the individual is admitted into treatment; and

(3) include strategies to reduce the adverse health effect of intravenous drug use and to reduce the risk of transmission of disease.

(c) For pregnant females, interim services shall also provide information and education about the effects of alcohol and drug use on the fetus and referrals for prenatal care.

(d) The program shall maintain documentation of interim services provided.

(e) Even when interim services are provided, an individual requesting treatment for intravenous drug use shall be admitted to an appropriate program within 120 days.

§144.531. Screening and Assessment.

(a) Clients receiving treatment services shall have a presenting problem which meets the appropriate DSM-IV criteria as specified in Chapter 148 of this title (relating to Facility Licensure).

(b) The screening shall include a criteria-based evaluation to determine the appropriate level of service.

(c) The psychosocial history and assessment for an adolescent shall take developmental issues into account and shall address child welfare involvement, peer relationships, and gang involvement.

(d) The program shall provide education and shall assess each client's risk for HIV infection, tuberculosis, and sexually transmitted diseases based on the National Institute of Drug Abuse's Model for Risk Reduction Counseling and the Texas Department of Health Model Workplace Guidelines.

§144.532. General Treatment Services.

(a) All treatment programs shall comply with applicable chemical dependency treatment facility licensure requirements for the specified level of service established in Chapter 148 of this title (relating to Facility Licensure).

(b) The program shall, to the extent possible and appropriate:

(1) implement a systematic process to identify appropriate referrals for family members;

(2) inform clients and involved family members of family services offered directly and through other community resources; and

(3) document family participation and attempts to engage family members in services.

(c) Levels II, III, and IV treatment programs funded by the commission shall provide:

(1) education about dysfunctional relationships within the family;

(2) coping skills training;

(3) case management;

(4) relapse prevention services; and

(5) support group opportunities for adolescents and adults.

(d) The program shall have written description of all educational and didactic sessions, including curricula, outlines, and activities.

(e) Group size shall be limited to a number that allows effective interaction between the group and facilitator and between group members.

(1) The counselor to client ratio in group counseling shall not exceed one to 16.

(2) Group education sessions, didactic sessions, multifamily groups, and other groups are limited to a maximum of 32 clients. This limitation does not apply to seminars, outside speakers, or other events designed for a large audience.

(f) The program shall establish links with available substance abuse and other mental health, health care, and social services to meet

the needs of clients and family members. Agreements to coordinate services must be established in writing and shall include:

(1) names of the organizations entering into the agreement;

(2) services or activities each organization will provide;

(3) signatures of authorized representatives; and

(4) dates of action and expiration.

§144.544. Dual Diagnosis Programs.

(a) Dually diagnosed clients shall have concurrent diagnoses which meets the criteria of DSM-IV for a substance use disorder and a major mental disorder.

(b) All treatment programs serving dual diagnosis clients shall:

(1) train appropriate employees on the identification of substance abuse and mental disorders and document the training in personnel files;

(2) develop and implement written procedures to properly identify clients exhibiting conditions or behavior that may suggest the need for dual diagnosis treatment; and

(3) develop and implement written referral procedures that incorporate other available resources to assist in the referral and placement of clients who are inappropriate for dual diagnosis treatment.

§144.551. Select Performance Measure Process.

(a) The treatment program will be held to specific performance measures as stated in the contract terms and conditions.

(b) The commission shall review actual performance with targets at least twice each fiscal year and notify the program in writing if the program failed to achieve the expected level of performance.

(c) The program shall respond within 30 days from the postmark date of the commission's written notification.

(d) After receiving the response, the commission shall take one of the following actions.

(1) Negotiate a revision of performance measures with final approval from the commission.

(2) Permit a one-time extension of the review period and require submission of a corrective action plan to the commission. The corrective action plan must include the program's method and timeframes for correcting or resolving the noted deficiencies.

(e) In subsequent reviews, if the program fails to satisfactorily resolve any performance measure deficiencies as noted in the commission's review, the commission will implement further corrective action and may impose one or more of the following sanctions:

(1) designation as a high-risk provider;

(2) suspension or withholding of payments;

(3) one-time decrease in the contract amount for the fiscal year;

(4) permanent decrease in the contract amount; or

(5) termination of the contract.

§144.552. Select Performance Measure Definitions.

(a) Completion of Treatment. This measure applies to Levels II, III, and IV, except for pharmacotherapy programs. For a client to have completed treatment, the client record must indicate that all of the following criteria have been met.

(1) A client must substantially complete the planned duration of the program and treatment plan objectives. This means that the average of items (A) and (B) below must equal or exceed 75%.

(A) The percentage of the planned duration of stay that was completed by the client. In programs with a variable length of stay, the planned duration of stay documented in the most recent treatment plan is used as a basis for calculation.

(B) The percentage of the behavioral objectives identified in the original treatment plan and subsequent revisions that have been achieved by the client.

(2) A discharge plan or transfer note must have been completed in accordance with the requirements noted in §148.322 of this title (relating to Discharge Plan) or §148.304 of this title (relating to Treatment Plan Reviews.)

(3) The discharge summary or transfer note shall indicate whether the client has successfully completed treatment according to the above criteria, and must be signed by a qualified credentialed counselor. The client record must also contain supporting documentation for completion.

(b) Abstinence. This measure applies to Levels II, III, and IV programs, except for pharmacotherapy programs.

(1) For youth, abstinence is the percent of youth who report no use of alcohol or drugs within the past 30 days when contacted 60 days after discharge from the treatment program. For those youth who are transferred to another commission-funded level of service within the same program (therefore no follow-up is required), abstinence is the percent of transferred youth who report no use of alcohol or drugs during the 30 days prior to discharge or the duration of treatment, whichever is less.

(2) For adults, abstinence is the percent of adults who report no use of their primary substance within the past 30 days when contacted 60 days after discharge from the treatment program. For those adults who are transferred to another commission-funded level of service within the same program (therefore no follow-up is required), abstinence is the percent of transferred adults who report no use of alcohol or drugs during the 30 days prior to discharge or the duration of treatment, whichever is less.

(c) Referral Rate. This measure applies to Level I programs. Referral rate is the percentage of discharged clients who have completed Level I treatment and are referred or transferred for continuing substance abuse treatment as defined below.

(1) Completion of Level I Treatment. For a client to have completed Level I treatment, the client record must indicate that both of the following criteria have been met.

(A) Levels of toxic substances and withdrawal symptoms have been sufficiently reduced such that the client is medically stable and able to participate in a less intensive level of treatment. A statement to this effect must be signed by the medical supervisor of the program in the discharge summary or transfer note.

(B) A discharge plan or transfer note must be completed prior to discharge or transfer in accordance with the requirements noted in §148.322 of this title (relating to Discharge Plan) or §148.304 of this title (relating to Treatment Plan Revisions).

(2) Referral or Transfer. For a client to have been referred or transferred from Level I to continuing substance abuse treatment, the client record must indicate that one of the following criteria has been met.

(A) A referral and an attempt to place the client in a less intensive level of treatment outside the program has been made. This must be documented in the client record.

(B) The client has been transferred to a less intensive level of treatment within the program. The client record must include a transfer note to document the transfer.

§144.553. Client Billings.

(a) Treatment programs shall submit monthly client billings for each client served in the program who is supported fully or partially with commission funds.

(b) Treatment programs funded through the unit cost payment mechanism shall use the client billing forms to request monthly reimbursement. Treatment programs funded through the financial assistance payment mechanism shall also submit client billing forms, but payments will be based on satisfactory submission of a request for advance or reimbursement (RFA).

(c) Programs may bill for only one level and service type (outpatient or residential) per client per day.

(d) A program may hold an empty residential bed and bill for a client who is on a planned, approved absence for up to two consecutive days. The frequency of approved absences shall be reasonable and appropriate and shall not exceed four days in a 30-day period, except as provided below.

(1) Providers shall include planned absences for delivery in treatment plans for each pregnant female, and shall ensure that a bed is available for the female upon her return.

(2) Absences for medical treatment (including delivery), court appearances, or other emergencies may exceed 48 hours, but commission approval is required if the absence exceeds 96 hours.

(e) Billings with incomplete or invalid information may generate an error report. When a billing error report is received, the program shall promptly correct the errors or resubmit new client billings as needed. Errors must be corrected before the next billing cycle.

(f) Forms submitted to the commission must contain complete and valid information.

(g) The commission will not accept or process payment requests until corresponding Client Oriented Data Acquisition Process (CODAP) Admission forms have been submitted and all errors identified through the electronic interface system's edit checks have been corrected.

(h) The provider shall maintain complete documentation for all services paid for by commission funds. In addition to the items required by licensure rules, the client record shall include the following information:

(1) weekly summary progress notes which provide a summary of all scheduled groups attended by the client, including the dates covered, the topics, the number of hours, and the client's level of participation;

(2) documentation of the purpose, duration, and justification of any approved absence from a residential program;

(3) a record of all case management, referral, linkage, and follow-up activities; and

(4) a progress note documenting the information gathered in the 60-day follow-up contact, including:

(A) the date and time of successful follow-up contact;

(B) the name of the person contacted and relationship to the client;

(C) the telephone number of the person contacted;

(D) documentation of any unsuccessful attempts at follow-up; and

(E) the signature of the person who conducted and documented the follow-up interview.

§144.554. CODAP Reports.

(a) All treatment programs shall submit Client Oriented Data Acquisition Process (CODAP) reports to the commission on all clients receiving commission-funded substance abuse treatment services. This includes:

(1) A CODAP Facility Summary (CFS) for each month of the contract period;

(2) a youth or adult Admission Report (new, readmission, or transfer) for each client who will be billed to the commission;

(3) a youth or adult Discharge Report each time a client transfers from one commission funded level of service and/or site into another commission funded level of service and/or site;

(4) a youth or adult Discharge Report when the client ceases receiving commission-funded services; and

(5) a youth or adult Follow-up Report, which should be completed on each client at least 60 days from his or her last face-to-face substance abuse treatment contact. (A follow-up report is not required for certain discharge reasons listed in the CODAP Reference and Instruction Manual.)

(b) Programs shall comply with reporting procedures detailed in the CODAP Reference and Instruction Manual. Any changes to instructions that are mailed to treatment programs from the commission prior to revising the CODAP manual will supersede the instructions in the current CODAP manual.

(c) Each month, the program must verify that all clients appearing on the Active Clients List are still receiving a commission-funded level of service. If not, a discharge report must be submitted for each client as instructed under paragraph (3) or (4) of subsection (a) of this section.

(d) Each month, the program shall verify on the CODAP Facility Summary:

(1) that all discharge and follow-up reports due that month (and those due in previous months, if applicable) are being transmitted; or

(2) provide clear justification for not transmitting all required reports and the date the reports will be transmitted.

(e) The program must submit CODAP corrections and/or missing forms listed on the CODAP Error Report or CODAP Rejected Forms Report monthly. The corrections are due along with the next month's CODAP reports by the due date listed in the CODAP Reference and Instruction Manual.

(f) If a program is terminated, the provider must submit discharge reports for all clients that are on the Active Clients List and correct all errors on the CODAP Error Reports as directed in the close-out procedures

(g) If the provider closes a site, but still has other commission-funded treatment sites, the provider must submit:

(1) discharge reports for all clients that were in the closed site;

(2) follow-up reports on all clients that were discharged from the closed site (once 60 days have elapsed from their date of discharge); and

(3) correct errors on CODAP Error Report (if any).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter F. Reports

40 TAC §§144.511, 144.512, 144.521-144.531

The Texas Commission on Alcohol and Drug Abuse adopts the repeal of §§144.511, 144.512, and 144.521-144.531, concerning reporting requirements for funded providers, without changes to the proposed text as published in the June 24, 1997, issue of the *Texas Register* (22 TexReg 6031).

These sections are repealed to allow adoption of new funding rules, and the repeal will delete obsolete language.

These sections establish general provisions and describe requirements regarding the electronic forms interchange system, CODAP reports, client billings, TCADA-FACTS form, performance and activity measures, payment request procedures, financial status reports, quarterly narrative reports, close-out, and historically underutilized business reports.

No comments were received regarding adoption of the repeal.

The repeals are adopted under the Texas Health and Safety Code, §461.012(15), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules

that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the repealed sections is the Texas Health and Safety Code, Chapter 461.

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Subchapter G. Audits

40 TAC §§144.611–144.615, 144.621–144.624, 144.631–144.633

The Texas Commission on Alcohol and Drug Abuse adopts the repeal §§144.611-144.615, 144.621-144.624, and 144.631-144.633, concerning auditing requirements for funded providers, without changes to the proposed text as published in the June 24, 1997, issue of the *Texas Register* (22 TexReg 6031).

These sections are repealed to allow adoption of new funding rules, and the repeal will delete obsolete language.

These sections include provisions regarding annual audits, auditor qualifications, audit agreement, monitoring, audit report, audit due date, corrective action plan, commission review of audit report, acceptance letters, compliance review, and corrective action.

No comments were received regarding adoption of the repeal.

The repeals are adopted under the Texas Health and Safety Code, §461.012(15), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the repealed sections is the Texas Health and Safety Code, Chapter 461.

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Subchapter H. Sanctions

40 TAC §§144.711–144.714, 144.721–144.727, 144.731, 144.732

The Texas Commission on Alcohol and Drug Abuse adopts the repeal of §§144.711-144.714, 144.721-144.727, 144.731, and 144.732, concerning sanctions for funded providers, without changes to the proposed text as published in the June 24, 1997, issue of the *Texas Register* (22 TexReg 6032).

These sections are repealed to allow adoption of new funding rules, and the repeal will delete obsolete language.

These sections establish criteria for sanctions and address fraudulent billing, abuse and neglect, other violations, withholding cash payments, disallowing costs, suspension, termination, withholding future awards, other remedies, reducing award amount, requirements for high-risk organizations, and effects of suspension and termination.

No comments were received regarding adoption of the repeal.

The repeals are adopted under the Texas Health and Safety Code, §461.012(15), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the proposed new sections is the Texas Health and Safety Code, Chapter 461.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Chapter 148. Facility Licensure

Subchapter A. Licensure Information

General Provisions

40 TAC §148.1, §148.2

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §148.1 and §148.2, concerning licensure information, without changes to the proposed text as published in the June 24, 1997, issue of the *Texas Register* (22 TexReg 6033).

The amendments are adopted to clarify existing provisions.

These sections define the purpose of the chapter and establish exemptions from licensure.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Health and Safety Code, Title 6, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the adopted rules is the Texas Health and Safety Code, Title 6, Subtitle B, 464.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Proposal publication date: June 24, 1997

For further information, please call: (512) 349-6609

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40 TAC §148.3

The Texas Commission on Alcohol and Drug Abuse adopts the repeal of §148.3, concerning licensure information, without changes to the proposed text as published in the June 24, 1997, issue of the *Texas Register* (22 TexReg 6033).

The repeal is adopted because the language is not necessary.

This section describes the applicability of licensure rules.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Health and Safety Code, Title 6, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the repealed section is the Texas Health and Safety Code, Title 6, Subtitle B, 464.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mark S. Smock

Deputy for Finance Administration

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40 TAC §148.3

The Texas Commission on Alcohol and Drug Abuse adopts new §148.3, concerning licensure information, with changes to the proposed text as published in the June 24, 1997, issue of the *Texas Register* (22 Tex Reg 6034).

The new section is adopted to streamline licensure procedures. Several provisions have been clarified.

This section explains requirements for licensure of multiple sites and services.

The commission received comments from the Association of Substance Abuse Service Providers of Texas, the Serenity Foundation of Texas, and a number of individuals.

Comment: This is a practical approach that will facilitate service delivery.

Response: The commission agrees with this comment.

The new rules are adopted under the Texas Health and Safety Code, Title 6, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the adopted rules is the Texas Health and Safety Code, Title 6, Subtitle B, 464.

§148.3. *Sites and Services.*

(a) The facility shall have a licensure certificate for each site it operates showing the level(s) of service the facility is authorized to provide.

(b) A facility that has received commission approval to provide a specific level of service may provide that service at any of its licensed sites or through extension services.

(c) A licensed facility shall have written approval from the commission before accepting court commitments.

(d) The provider shall have written approval from the commission as a clinical training institution before designating and compensating interns to perform counseling, assessments, or treatment interventions.

(e) The provider shall have written approval from the commission as a practicum provider before providing practicum supervision for counselor trainees.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Licensure Procedures

40 TAC §§148.21-148.27

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §§148.21-148.27, concerning licensure information. Section 148.27 is adopted with changes to the proposed text as published in the June 24, 1997, issue of the *Texas Register* (22 TexReg 6034). Sections 148.21-148.26 are adopted without changes and will not be republished.

The amendments are adopted to streamline the licensure process, allow acceptance of agency and commercial checks, and clarify the wording of existing provisions. Section 148.27 has been revised to delete language about removing records from the program site.

These rules describe procedures for new license applications, license renewals, changes in licensure status, changes in ownership, licensure fees, and program closures. The rules also define the parameters for review of licensed facilities.

The commission received comments from the Association of Substance Abuse Service Providers of Texas, the Serenity Foundation of Texas, Christian Farms/Treehouse, Inc., Riverside Hospital, and a large number of individuals. The comments all related to removal of records from the program site.

Comment: Removing records from the property is in violation of the Code of Federal Regulations, Title 42, Part 2, and violates client confidentiality. Also, the provider is the legal custodian of the records, and must be able to produce original records for other audits if needed. Change language to state that "copies shall be made available for removal" or "Any documents which need to be removed will be taken as copies at the expense of the commission."

Response: The commission has deleted language about removing original records from the premises because we are confident that providers will fully cooperate with requests to duplicate records needed for audit purposes. The confidentiality statutes and regulations do, however, give the commission explicit authority to remove client records from the program site. The code of Federal Regulations, Title 42, §2.53 states that records containing patient-identifying information may be copied or removed from program premises by any federal, state, or local governmental agency which provides financial assistance to the program or is authorized by law to regulate its activities.

This section also has strict requirements that protect client confidentiality when records are copied or removed for audit or evaluation activities. Specifically, the information may be used only to carry out the audit or evaluation and may only be disclosed back to the program from which it was obtained. In addition, the agency must maintain the patient-identifying information in accordance with specified security requirements and destroy all patient-identifying information upon completion of the audit or evaluation.

The commission takes its responsibility for protecting client information very seriously. Client-identifying information is never cited in an audit report or any other document subject to public examination, and internal procedures ensure that staff access is limited to those individuals directly involved with the audit.

The amendments are adopted under the Texas Health and Safety Code, Title 6, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to

adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the adopted rules is the Texas Health and Safety Code, Title 6, Subtitle B, 464.

§148.27. *Licensure Review.*

(a) The commission may conduct a scheduled or unannounced on-site inspection or request materials for review.

(b) The applicant shall allow commission staff to access the facility's grounds, buildings, and records and to interview or survey members of the governing body, staff, and clients. The applicant shall make all property, records, and documents related to the licensure application available for examination, copy, or reproduction during normal business hours, on or off premises.

(c) The applicant shall correct identified deficiencies promptly.

(d) The applicant shall not provide chemical dependency treatment services before receiving written notice of licensure approval.

(e) The facility shall display the licensure certificate prominently at each licensed site.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Definitions

40 TAC §148.61

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §148.61, concerning definitions, with changes to the proposed text as published in the June 24, 1997, issue of the *Texas Register* (22 TexReg 6036).

The adopted amendments add new definitions for life skills training, day treatment, and private practice and to clarify some of the existing definitions. Definitions have been added for acute withdrawal, assessment, process counseling, and treatment intervention. The term "facility director" has been replaced with "executive director". Definitions of "life skills training" and "private practice" have been expanded, and a number of cross references have been added.

These rules define the terms used in this chapter.

The commission received comments from the Association of Substance Abuse Service Providers of Texas, the Serenity Foundation of Texas, Christian Farms/Treehouse, Inc., and a number of individuals.

Comment: Clear definitions need to be added for counseling, education, assessment, and crisis intervention.

Response: A definition for assessment has been added. Cross references have been added for the terms counseling and education. A definition has also been added for treatment intervention, which replaces crisis intervention.

Comment: The definition of counselor should be made consistent with Chapter 144.

Response: The definitions are now consistent.

Comment: The definition of private practice appears to have exceeded requirements of mental health licensing boards.

Response: The commission accepts the definitions of other licensing boards with respect to private practice. This definition applies to licensed chemical dependency counselors and in situations where another board does not provide guidance. The definition has been revised to clarify this.

The amendments are adopted under the Texas Health and Safety Code, Title 6, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the adopted rules is the Texas Health and Safety Code, Title 6, Subtitle B, 464.

§148.61. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

Acute withdrawal-Withdrawal symptoms that threaten the physical safety of the client, including but not limited to: seizures, hypertensive crisis, deliriums tremens, and severe dehydration with metabolic imbalances.

Approved clinical training institution-An individual or legal entity approved by the commission to supervise a counselor trainee who performs counseling, assessments, or interventions. The commission currently recognizes chemical dependency treatment facilities licensed by the commission (or exempt from commission licensure) which are approved as clinical training sites. Other programs or entities requesting this designation must receive approval on a case-by-case basis.

Assessment (treatment)-The process used to gain sufficient information to identify, among other things, the participant's strengths, problems, and needs as they relate to the use/abuse of alcohol and/or other drugs and the risk of contracting or transmitting infectious diseases/sexually transmitted diseases.

Chemical dependency counselor- A qualified credentialed counselor or counselor intern working under direct supervision.

Client-An individual who has been admitted to a chemical dependency treatment facility licensed by the commission and is currently receiving services. A licensed chemical dependency counselor providing chemical dependency services at a facility shall not have a non-professional relationship with any client receiving chemical dependency or related services from the facility for two years after the client is discharged.

Consenter-The individual legally responsible for giving informed consent for a client. This may be the client, parent, guardian, or

conservator. Unless otherwise provided by law, a legally competent adult is his or her own consenter. Consenters include adult clients, clients 16 or 17 years of age, and clients 13-16 years of age admitting themselves for chemical dependency counseling under the provisions of the Family Code, §32.004.

Consultant-An individual who is not an employee who provides professional advice or services to the facility for compensation.

Counselor-See chemical dependency counselor.

Counselor intern (CI)-A person pursuing a course of training in chemical dependency counseling at a regionally accredited institution of higher education or an approved clinical training institution who has been designated as a counselor intern by the institution. The activities of a counselor intern shall be performed under the direct supervision of a qualified credentialed counselor.

Counselor trainee-A person working to accumulate the 4,000 hours of supervised work experience required for licensure as a chemical dependency counselor. A trainee receiving compensation for performing assessments, counseling, or treatment interventions shall be designated as a counselor intern by a regionally accredited institution of higher education or an approved clinical training institution.

Day treatment-An outpatient program where the client spends more than five consecutive hours at the program site.

Direct supervision-Oversight and direction of a counselor trainee provided by a qualified credentialed counselor (QCC). If the trainee has less than 2,000 hours of supervised work experience, the supervisor must be on site when the trainee is providing services. If the trainee has at least 2,000 hours of documented supervised work experience, the supervisor may be on site or immediately accessible by telephone. The qualified credentialed counselor shall:

(A)-(E) (No change.)

Discharge-The time when a client leaves a facility and will no longer be receiving chemical dependency treatment from that facility.

Education-See chemical dependency education.

Executive director-The individual authorized by the governing body to act on its behalf in the overall administration of the facility.

Governing body-The individual or individuals legally established to operate a facility. The governing body has ultimate legal authority and responsibility for the facility's finances, services and operations.

Intervention and assessment service-A service that offers assessment, counseling, evaluation, treatment intervention, or referral services or makes treatment recommendations to an individual with respect to chemical dependency.

Licensed health professional-A physician, physician assistant, advance practice nurse, registered nurse, or licensed vocational nurse as defined in these rules.

Life Skills Training-A formalized program of training, based upon a written program description to assist the client in acquiring personal habits, attitudes, values, and social interaction skills that will enable the client to function effectively and/or become gainfully employed. It includes instruction in communication, stress management, problem solving, daily living, and decision making.

Mental health referral service-See Qualified Mental Health Referral Service.

Private practice-Unless otherwise defined by a licensing board, an individual's professional counseling practice in which the individual:

- (A) provides all treatment services personally;
- (B) does not report to a supervisor or utilize subordinate counseling staff;
- (C) is a licensed chemical dependency counselor or exempt from licensure.

Process counseling-Counseling designed to help clients identify and explore the feelings and emotions they encounter and resolve areas of conflict that led to their problems associated with chemical dependency. It does not include cognitively oriented or psychoeducational groups.

Qualified credentialed counselor (QCC)-A licensed chemical dependency counselor or one of the professionals listed below who can demonstrate two years of chemical dependency counseling experience or one year of chemical dependency counseling experience and 90 clock hours (six semester hours) of chemical dependency training including the 12 core functions from an accredited college or university or an education provider approved by the commission. Documentation shall be available upon request. The following professionals are eligible to serve as QCCs:

- (A)-(H) (No change.)

Staff-Individuals employed by the facility to provide services for the facility in exchange for money or other compensation.

Treatment-See chemical dependency treatment.

Treatment intervention-A meeting designed to persuade a chemically dependent individual to enter treatment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter B. Facility Management Administration

40 TAC §§148.71-148.73

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §§148.71-148.73, concerning facility management. Section 148.73 is adopted with changes to the proposed text as published in the June 24, 1997 issue of the *Texas Register* (22 Tex Reg 6037). Section 148.71 and §148.72 are adopted without changes and will not be republished.

The amendments are adopted to clarify existing provisions. In §148.73, the term "facility director" has been replaced with the term "executive director".

These rules establish requirements for the governing body, the executive director, and policies and procedures.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Health and Safety Code, Title 6, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the adopted rules is the Texas Health and Safety Code, Title 6, Subtitle B, 464.

§148.73. *Policies, Procedures, and Licensure Rules.*

- (a)-(b) (No change.)

(c) The governing body shall establish policies that comply with licensure rules, and the executive director facility director shall use the policies to develop and implement all needed procedures.

- (d) (No change.)

(e) The facility shall inform staff about any changes to the policy and procedure manual that are relevant to their job duties, document the notification, and provide training as needed.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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40 TAC §148.75

The Texas Commission on Alcohol and Drug Abuse adopts the repeal of §148.75, concerning facility management, without changes to the proposed text as published in the June 24, 1997, issue of the *Texas Register* (22 TexReg 6038).

The repeal is adopted because the rules in this section are being incorporated into another section of the rules.

This section describes required facility reports.

No comments were received regarding adoption of the repeals.

The repeal is adopted under the Texas Health and Safety Code, Title 6, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the repealed section is the Texas Health and Safety Code, Title 6, Subtitle B, 464.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Personnel and Staff Development

40 TAC §148.119

The Texas Commission on Alcohol and Drug Abuse adopts new §148.119, concerning personnel and staff development, with changes to the proposed text as published in the June 24, 1997, issue of the *Texas Register* (22 TexReg 6039).

The new section is adopted to create a separate section for this topic, which was previously combined with unrelated rules. The phrase "crisis interventions" has been replaced with "treatment interventions".

These rules require facilities to obtain approval as clinical training institutions if they compensate counselor interns for performing counseling, assessments, or crisis intervention.

No comments were received regarding adoption of the new rules.

The new rules are adopted under the Texas Health and Safety Code, Title 6, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the adopted rules is the Texas Health and Safety Code, Title 6, Subtitle B, 464.

§148.119. *Clinical Training Institutions.*

A facility shall not compensate a counselor trainee for performing counseling, assessments, or treatment interventions unless the facility has received a certificate of registration from the commission to be a clinical training institution and the facility has designated the trainee as a counselor intern. To be approved as a clinical training institution, a facility shall apply for approval and have:

- (1) a written description of the clinical training goals and objectives;
- (2) a written description of the clinical training experiences and activities;
- (3) a documented system of direct supervision; and
- (4) a documented system for evaluating the progress of interns in writing and providing them with appropriate information and guidance.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Safety

40 TAC §148.131, §148.132

The Texas Commission on Alcohol and Drug Abuse adopts the repeal of §148.131 and §148.132, concerning safety, without changes to the proposed text as published in the June 24, 1997, issue of the *Texas Register* (22 TexReg 6039).

The repeal is adopted because these sections are being moved to a different subchapter to improve organization.

This section describes the requirements for general environment and emergency evacuation.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Health and Safety Code, Title 6, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the repealed sections is the Texas Health and Safety Code, Title 6, Subtitle B, 464.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter C. Client Management

Client Rights

40 TAC §148.143, §148.147

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §148.143 and §148.147, concerning client rights, without changes to the proposed text as published in the June 24, 1997, issue of the *Texas Register* (22 TexReg 6040).

The amendments are adopted to clearly identify the topic of required procedures and to clarify that certain rights apply only to clients in residential programs.

These rules describe additional rights for voluntary clients and the grievance process.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Health and Safety Code, Title 6, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the adopted rules is the Texas Health and Safety Code, Title 6, Subtitle B, 464.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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40 TAC §148.148

The Texas Commission on Alcohol and Drug Abuse adopts new §148.148, concerning request for discharge, without changes to the proposed text as published in the June 24, 1997, issue of the *Texas Register* (22 TexReg 6040).

The new section is adopted because these rules are being moved from another subchapter.

These rules establish standards a facility must meet when a client requests to be discharged.

No comments were received regarding adoption of the new rules.

The new rules are adopted under the Texas Health and Safety Code, Title 6, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the adopted rules is the Texas Health and Safety Code, Title 6, Subtitle B, 464.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Abuse, Neglect, and Exploitation

40 TAC 148.161

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §148.161, concerning client abuse, neglect, and exploitation, with changes to the proposed text as published in the June 24, 1997, issue of the *Texas Register* (22 TexReg 6041).

The amendment is adopted to clarify that the facility must have a written policy and procedure to implement these rules. The term "facility director" has been replaced with the term "executive director".

These rules describe requirements to protect clients from abuse, neglect, and exploitation.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Health and Safety Code, Title 6, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the adopted rules is the Texas Health and Safety Code, Title 6, Subtitle B, 464.

§148.161. Client Abuse, Neglect, and Exploitation.

(a) The facility shall implement a written policy and procedures to protect clients from abuse, neglect, and exploitation.

(b) Any person who receives an allegation or has reason to suspect that a client has been, is, or will be abused, neglected, or exploited shall immediately inform the executive director or designee.

(c) If the allegation involves sexual exploitation, the executive director shall also comply with reporting requirements listed in the Civil Practice and Remedies Code, §81.006.

(d) The executive director shall take immediate action to prevent or stop the abuse, neglect, or exploitation and provide appropriate care and treatment.

(e) The executive director or designee shall make a verbal report to the commission within 24 hours. This is in addition to the reports specified in the Texas Human Resources Code, §48.082 and the Texas Family Code, §261.001.

(f) The person who reported the incident shall submit a written incident report to the executive director within 24 hours.

(g) The executive director shall send a written report to the commission within two working days after receiving notification of the incident. This report shall include:

(1) the name of the client and the person the allegations are against;

(2) the information required in the incident report or a copy of the incident report;

(3) other individuals, organizations, and law enforcement notified.

(h) The executive director or designee shall also notify the legal consentor. If the client is the legal consentor, family members

and significant others may be notified only if the client gives written consent.

(i) The facility shall investigate the complaint and take appropriate action unless otherwise directed by the commission.

(j) The governing authority or its designee shall take action needed to prevent any confirmed incident from recurring.

(k) The facility shall:

(1) document all investigations and resulting actions and keep the documentation in a central file;

(2) have a written policy that clearly prohibits the abuse, neglect, and exploitation of clients and a written procedure that defines the steps that will be taken to investigate and resolve any alleged incident;

(3) enforce the policy and procedure and provide appropriate sanctions for confirmed violations.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Client Information

40 TAC §148.171

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §148.171, concerning client information, without changes to the proposed text as published in the June 24, 1997, issue of the *Texas Register* (22 TexReg 6041).

The amendment is adopted to clarify that the facility must have a system for documenting HIV-related medical information that facilitates that delivery of coordinated care and a written policy and procedure to implement rules for client record security.

These rules describe requirements related to client record security.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Health and Safety Code, Title 6, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the adopted rules is the Texas Health and Safety Code, Title 6, Subtitle B, 464.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Crisis Management

40 TAC §§148.181-148.183, 148.185

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §§148.181-148.183 and 148.185, concerning crisis management. Section 148.181 and §148.183 are adopted with changes to the proposed text as published in the June 24, 1997 issue of the *Texas Register* (22 TexReg 6042). Section 148.182 and §148.185, are adopted without changes and will not be republished.

The amendment is adopted to require review of special treatment procedures within 24 hours and to clarify that the facility must have a written policy and procedure to implement these rules. The term "facility director" has been replaced with the term "executive director".

These rules describe requirements for significant incident reports, responding to emergencies, special treatment procedures, and adolescents absent without permission.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Health and Safety Code, Title 6, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the adopted rules is the Texas Health and Safety Code, Title 6, Subtitle B, 464.

§148.181. *Significant Incident Reports.*

(a) Staff shall complete an incident report for all significant client incidents, including:

(1)-(11) (No change.)

(12) clients absent without permission from a residential or day treatment program.

(b)-(e) (No change.)

(f) The executive director shall report these incidents to the commission in writing within 72 hours of discovery:

(1) fires and natural disasters;

(2) substantial disruption of program operation;

(3) death of an active client (on or off the program site);

and

(4) violations of laws, rules, and professional and ethical codes of conduct.

(g) The executive director shall report all incidents of alleged client abuse, neglect, and exploitation to the commission as described in §148.161 of this title (relating to Client Abuse, Neglect, and Exploitation).

(h) The facility shall store incident reports in a central file.

(i) Once a year, the executive director or designee shall review all incident reports to:

(1)-(3) (No change.)

(j) The facility shall have a procedure to ensure compliance with this section.

§148.183. Special Treatment Procedures.

Staff shall use special treatment procedures appropriately to protect the health, safety, and rights of clients and other individuals.

(1) The governing body shall adopt a policy to either authorize or prohibit the use of personal restraint, mechanical restraint, and seclusion.

(2)-(5) (No change.)

(6) Staff shall obtain authorization from the supervising qualified credentialed counselor before starting restraint or seclusion or as soon as possible after implementing the procedure.

(A)-(C) (No change.)

(7)-(10) (No change.)

(11) Clinical staff shall evaluate the incident within 24 hours and develop other written strategies for managing the client's behavior and preventing similar incidents.

(12) The executive director or designee shall:

(A) review all incident reports involving special treatment procedures;

(B) investigate unusual or possibly unjustified use of the procedures; and

(C) take appropriate action to address any identified problems.

(13)-(16) (No change.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter D. Program Services

General Program Services Provisions

40 TAC §148.202

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §148.202, concerning general program services provisions, with changes to the proposed text as published in the June 24, 1997, issue of the *Texas Register* (22 TexReg 6043).

The amendment is adopted to require procedures for the care of pregnant women and to clarify existing requirements. The proposed rule has been revised to require at least one staff person to demonstrate knowledge and/or experience in the special needs of pregnant women. This is to replace a training requirement proposed in a separate section.

These rules describe service requirements that apply to all programs.

The commission received comments from the Serenity Center of Texas and Christian Farms/Treehouse, Inc.

Comment: Care of the pregnant client should be handled through direct doctor's orders. Rather than specify procedures for the care of pregnant clients, perhaps require programs to ensure that the client receives appropriate care as directed by the physician.

Response: The commission agrees that care of the pregnant client should be handled through direct doctor's orders, and the rules require programs to refer pregnant clients to a primary care provider for appropriate prenatal care. The purpose of this standard is to ensure that the program has an appropriate regimen for pregnant clients which can be implemented as soon as the client is admitted and which can be used in situations where the primary care physician does not provide detailed written instructions. This would ensure pregnant clients are not given inappropriate medication and that their diet and activities are suitable. Certainly these basic procedures would be supplemented and/or replaced with more specific doctor's orders for each individual client.

The amendments are adopted under the Texas Health and Safety Code, Title 6, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the adopted rules is the Texas Health and Safety Code, Title 6, Subtitle B, 464.

§148.202. Services Required In All Programs.

(a) All services shall be delivered according to a written plan which includes a service schedule listing services provided and timeframes in which they are provided.

(b) (No change.)

(c) Members of the client's treatment team shall demonstrate effective communication and coordination of efforts and activities.

(d) Every residential client shall have a medical history and physical examination that is signed by a physician, physician assistant, or advanced nurse practitioner.

(e)-(f) (No change.)

(g) The program shall provide HIV education based on the Model Workplace Guidelines developed by the Texas Department of Health.

(h) The provider shall:

(1) provide access to pre-test and post-test counseling and anonymous or confidential HIV testing; and

(2) ensure that testing for the etiologic agent for AIDS is not carried out unless it is accompanied by written consent and counseling that conforms to the model protocol developed by the Texas Department of Health; and

(3) refer HIV positive clients to a provider of HIV early intervention services (when available).

(i) (No change.)

(j) The program shall refer clients to health, mental health, and ancillary services necessary to meet treatment goals and conduct follow-up. Residential programs shall ensure clients have access to appropriate health care and mental health services.

(k) Programs that admit females of child-bearing age shall ensure that at least one staff person has training and/or experience in providing specialized care for substance-abusing pregnant females. In addition, the program shall:

(1) adopt procedures for the care of pregnant clients that is approved by a licensed health care professional;

(2) implement the procedures whenever a pregnant female is admitted; and

(3) refer pregnant clients who are not receiving prenatal care to an appropriate health care provider and monitor follow-through.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 30, 1997.

TRD-9709855

Mark S. Smock

Deputy for Finance Administration

Texas Commission on Alcohol and Drug Abuse

Effective date: September 1, 1997

Proposal publication date: June 24, 1997

For further information, please call: (512) 349-6609



Special Provisions

40 TAC §§148.231-148.234

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §§148.231-148.234, concerning requirements for special services. Section 148.233 is adopted with changes to the proposed text as published in the June 24, 1997, issue of the *Texas Register* (22 TexReg 6044). Sections 148.231, 148.232, and 148.234, are adopted without changes and will not be republished.

The amendments are adopted to clarify existing requirements, apply special physical plant standards to all programs that provide structured therapeutic children's services, and broaden the correctional facilities exempt from certain licensure requirements. Section 148.233 was revised to specify that the program is responsible for providing oversight and guidance to ensure

children receive appropriate care when they are supervised by clients. The provision regarding clients caring for other parents' children has also been clarified, and a cross-reference was corrected.

These rules describe requirements specific to adolescents, parents and their dependent children, structured therapeutic children's services, and correctional facilities.

The commission received comments from Christian Farms/Treehouse, Inc.

Comment: Direct care staff should not require training if the program is licensed by the Department of Human Services.

Response: Licensure from the Department of Human Services fully meets this standard.

Comment: The proposed ratios for clients being responsible for children need clarification because, as stated, the facility could be out of compliance by letting a client take care of her own children.

Response: The rule has revised to indicate this applies only when a client is caring for other client's children.

The amendments are adopted under the Texas Health and Safety Code, Title 6, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the adopted rules is the Texas Health and Safety Code, Title 6, Subtitle B, 464.

§148.233. *Structured Therapeutic Children's Services.*

(a) General requirements.

(1) The program shall ensure that children are directly supervised by parents or qualified childcare providers at all times. The program is always responsible for providing oversight and guidance to ensure children receive appropriate care when they are supervised by clients.

(2) (No change.)

(3) The program shall provide a variety of age-appropriate equipment, toys, and learning materials.

(4) Standards protecting the health, safety, and welfare of clients apply to their children.

(5) Behavior management shall be fair, reasonable, consistent, and related to the child's behavior. Physical discipline is prohibited.

(b) Staffing.

(1) Every program that provides structured therapeutic children's services shall have a supervisor or consultant with at least:

(A) 90 contact hours of education and training in child development and/or early childhood education; and

(B) (No change.)

(2)-(3) (No change.)

(4) When trained staff or volunteers are responsible for children, the staff-to-child ratio shall not exceed 1:4 for infants (18 months and younger) and 1:6 for toddlers and children.

(5) When a client is responsible for children of other clients, the parent-to-child ratio (including the clients own children) shall not exceed 1:2 for infants (18 months and younger) and 1:4 for toddlers and children. Clients shall not supervise another parent's children without written consent from the legal guardian and staff approval. When a client supervises another parent's children, staff shall provide appropriate oversight.

(c) Safety practices.

(1) The emergency evacuation procedures shall include provisions for children approved by the fire marshal.

(2)-(3) (No change.)

(4) The program site shall meet the additional physical plant requirements listed in §148.232 of this title (relating to Parents and their Dependent Children).

(d) Health practices.

(1) The program shall obtain a consent to obtain emergency medical care for each child at admission.

(2) Staff, volunteers, and parents shall use universal precautions when caring for children other than their own.

(3) Staff who are supervising children shall check all diapers frequently, change without delay, and dispose of the diapers in a sealed container.

(4) Children's medication shall be given according to the label by the parent, a licensed health professional, or an employee trained in self-administration of medication, and documented by a trained staff member. The facility shall obtain written consent from the parent to administer the medication, as required. If trained staff give the medication, the facility must document the circumstances or situation that prevents the parent or licensed health professional from performing the duties. The facility shall assume full responsibility for the proper administration and documentation of medication.

(e) Residential Programs shall also comply with the following requirements.

(1) The daily activity schedule shall include a variety of structured and unstructured age-appropriate activities.

(2) School age children shall have access to school.

(3) The program shall have procedures for isolating parents and children who have communicable diseases and providing them with appropriate care and supervision.

(4) The program shall keep current immunization records for each child at the program site as required by the Texas Department of Health.

(5) Each child shall have a medical assessment from a medical doctor, physician assistant, advanced practice nurse, or registered nurse within 96 hours of admission. Copies of an assessment performed up to seven days before admission may be used.

(6) The program shall provide potty chairs for small children and sanitize them after each use.

(7) The program shall provide age-appropriate bathing facilities. Infants shall not be bathed in sinks.

(8) The program shall ensure that children are clean and appropriately dressed.

(9) The program shall provide an adequate diet for childhood growth and development, including two snacks per day.

(10) Rooms and buildings shall have at least 30 usable square feet of indoor activity space per child when occupied by children.

(11) Where children share sleeping space with parents, bedrooms shall have at least 30 usable square feet per infant (in cribs) and 40 usable square feet per child.

(12) Nurseries shall have 35 usable square feet per crib.

(13) The program site shall have adequate outdoor play space with a safe route of access.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 30, 1997.

TRD-9709856

Mark S. Smock

Deputy for Finance Administration

Texas Commission on Alcohol and Drug Abuse

Effective date: September 1, 1997

Proposal publication date: June 24, 1997

For further information, please call: (512) 349-6609

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40 TAC §148.236

The Texas Commission on Alcohol and Drug Abuse adopts new §148.236, concerning extension services, without changes to the proposed text as published in the June 24, 1997, issue of the *Texas Register* (22 TexReg 6047).

The new section is adopted to streamline licensure procedures and allow facilities to take services to clients who cannot be effectively served at a licensed site.

These rules establish standards for facilities that offer services at a site that is not owned, leased, operated, or controlled by the facility.

The commission received comments from the Association of Substance Abuse Service Providers of Texas, the Serenity Foundation of Texas, Burke Center, and a number of individuals.

Comment: This is a giant step in the right direction and will help us extend services to outlying counties and underserved populations.

Response: The commission agrees that the procedures will allow expansion of services.

The new rules are adopted under the Texas Health and Safety Code, Title 6, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the adopted rules is the Texas Health and Safety Code, Title 6, Subtitle B, 464.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 30, 1997.

TRD-9709845

Mark S. Smock

Deputy for Finance Administration

Texas Commission on Alcohol and Drug Abuse

Effective date: September 1, 1997

Proposal publication date: June 24, 1997

For further information, please call: (512) 349-6609



Medication

40 TAC §§148.261, 148.262, 148.267

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §§148.261, 148.262, and 148.267, concerning medication, without changes to the proposed text as published in the June 24, 1997, issue of the *Texas Register* (22 TexReg 6047).

The amendments are adopted to clarify existing requirements.

These rules describe general requirements regarding medication, medication storage, and administration of prescription medication.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Health and Safety Code, Title 6, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the adopted rules is the Texas Health and Safety Code, Title 6, Subtitle B, 464.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 30, 1997.

TRD-9709857

Mark S. Smock

Deputy for Finance Administration

Texas Commission on Alcohol and Drug Abuse

Effective date: September 1, 1997

Proposal publication date: June 24, 1997

For further information, please call: (512) 349-6609



Subchapter E. Treatment Process

Discharge

40 TAC §148.322, §148.323

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §148.322 and §148.323, concerning discharges, without changes to the proposed text as published in

the June 24, 1997, issue of the *Texas Register* (22 TexReg 6048).

The amendments are adopted to clarify existing requirements.

These rules describe general requirements regarding discharge plans and discharge summaries.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Health and Safety Code, Title 6, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the adopted rules is the Texas Health and Safety Code, Title 6, Subtitle B, 464.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 30, 1997.

TRD-9709858

Mark S. Smock

Deputy for Finance Administration

Texas Commission on Alcohol and Drug Abuse

Effective date: September 1, 1997

Proposal publication date: June 24, 1997

For further information, please call: (512) 349-6609



40 TAC §148.325

The Texas Commission on Alcohol and Drug Abuse adopts the repeal of §148.325, concerning request for discharge, without changes to the proposed text as published in the June 24, 1997, issue of the *Texas Register* (22 TexReg 6048).

The repeal is adopted because this section is being moved to another subchapter.

This section describes standards a facility must follow when a voluntary client requests discharge.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Health and Safety Code, Title 6, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the repealed section is the Texas Health and Safety Code, Title 6, Subtitle B, 464.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 30, 1997.

TRD-9709840

Mark S. Smock

Deputy for Finance Administration

Texas Commission on Alcohol and Drug Abuse

Effective date: September 1, 1997
Proposal publication date: June 24, 1997
For further information, please call: (512) 349-6609

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Subchapter F. Physical Plant

General Physical Plant Provisions

40 TAC §148.331, §148.332

The Texas Commission on Alcohol and Drug Abuse adopts new §148.331 and §148.332, concerning building requirements that apply to all programs, without changes to the proposed text as published in the June 24, 1997, issue of the *Texas Register* (22 TexReg 6049).

The new sections are adopted because these rules are being moved from another subchapter in the rules.

These rules establish standards for the general environment and emergency evacuation.

No comments were received regarding adoption of the new sections.

The new rules are adopted under the Texas Health and Safety Code, Title 6, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the adopted rules is the Texas Health and Safety Code, Title 6, Subtitle B, 464.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 30, 1997.

TRD-9709846
Mark S. Smock
Deputy for Finance Administration
Texas Commission on Alcohol and Drug Abuse
Effective date: September 1, 1997

Proposal publication date: June 24, 1997
For further information, please call: (512) 349-6609

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Special Physical Plant Requirements

40 TAC §148.372

The Texas Commission on Alcohol and Drug Abuse adopts the repeal of §148.372, concerning requirements for residential facilities, without changes to the proposed text as published in the June 24, 1997, issue of the *Texas Register* (22 TexReg 6050).

The repeal is adopted because these rules are being incorporated into another subchapter.

This section describes additional physical plant requirements for programs that provide services to children.

No comments were received regarding adoption of the repeals.

The repeal is adopted under the Texas Health and Safety Code, Title 6, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the repealed section is the Texas Health and Safety Code, Title 6, Subtitle B, 464.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 30, 1997.

TRD-9709841
Mark S. Smock
Deputy for Finance Administration
Texas Commission on Alcohol and Drug Abuse
Effective date: September 1, 1997
Proposal publication date: June 24, 1997
For further information, please call: (512) 349-6609

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TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the *Texas Register* publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the *Texas Register* not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the *Texas Register* not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

PROPOSED ACTION

The Commissioner of Insurance, at a public hearing under Docket Number 2300 scheduled for September 16, 1997 at 9:00 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a staff petition. Staff's petition (captioned "Second Petition...") seeks amendment of the Texas Automobile Rules and Rating Manual (the Manual), to adopt new and/or adjusted 1995-98 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Ref. Number A-0797-21-I) was filed on July 29, 1997.

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the listed 1995-98 model vehicles.

A copy of the petition containing the full text of the proposed amendments to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 463-6326; refer to (Ref. Number A-0797-21-I).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the Texas Register, to the Office of the Chief Clerk, Texas

Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to David Durden, Deputy Commissioner, Property and Casualty Insurance Lines, Texas Department of Insurance, P. O. Box 149104, MC 104-5A, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

Issued in Austin, Texas, on July 15, 1997.

TRD-9709918

Caroline Scott

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: July 31, 1997

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TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

Figure: 16 TAC 12.360(h)(2)(A)

Distance (D) from the blasting site, in feet.	Maximum allowable peak particle velocity (V_{max}) for ground vibration, in inches/second. ¹	Scaled-distance factor to be applied without seismic monitoring (D_s). ²
0 to 300	1.25	50
301 to 5,000	1.00	55
5,001 and beyond	0.75	65

¹ Ground vibration shall be measured as the particle velocity. Particle velocity shall be recorded in three mutually perpendicular directions. The maximum allowable peak particle velocity shall apply to each of the three measurements.

² Applicable to the scaled-distance equation of paragraph (3)(A) of this subsection.

Figure: 16 TAC 12.364(c) (3)

Total amount of fill material	Predominant type of fill material	Minimum size of drain, in feet	
		Width	Height
Less than 1,000,000			
yd ³	Sandstone.....	10	4
D ₀	Shale	16	8
More than 1,000,000			
yd ³	Sandstone.....	16	8
D ₀	Shale	16	16

Figure: 16 TAC 12.528(f) (1) (A)

Lower frequency limit of measuring system, in Hz (+ or - 3dB)	Maximum Level, in dB
0.1 Hz or lower) flat response ¹	134 peak.
2 Hz or lower) flat response	133 peak.
6 Hz or lower) flat response	129 peak.
C-weighted, slow response ¹	105 dB C

¹ Only when approved by the Commission.

Figure: 16 TAC 12.528(h)(2)(A)

Distance (D) from the blasting site, in feet.	Maximum allowable peak particle velocity (V_{max}) for ground vibration, in inches/second. ¹	Scaled-distance factor to be applied without seismic monitoring (D_p). ²
0 to 300	1.25	50
301 to 5,000	1.00	55
5,001 and beyond	0.75	65

¹ Ground vibration shall be measured as the particle velocity. Particle velocity shall be recorded in three mutually perpendicular directions. The maximum allowable peak particle velocity shall apply to each of the three measurements.

² Applicable to the scaled-distance equation of paragraph (3)(A) of this subsection.

Figure: 16 TAC 12.532(c)(3)

Total amount of fill material	Predominant type of fill material	Minimum size of drain, in feet	
		Width	Height
Less than 1,000,000			
yd ³	Sandstone.....	10	4
D ₀	Shale	16	8
More than 1,000,000			
yd ³	Sandstone.....	16	8
D ₀	Shale	16	16

TABLE 16

OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the ***Texas Register***.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the ***Texas Register***.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas Department of Agriculture

Tuesday, August 12, 1997, 9:30 a.m.

TexasSweet Building, Board Room, 901 Business Park Drive

Mission

Texas Citrus Producers Board

AGENDA:

Call Meeting to Order and Opening Remarks

Action: Swearing in and seating of duly elected board members; Elect Officers for 1997–98; Approve Minutes of last meeting; Review and approve financial statement; Approve selection of new bank Depository; Selecting of 1997–98 projects; Assessment rate of 1997–98; Approval of 1997–98 budget; Approval of administrative budget; Review and approve recommendation regarding Personnel Supporting TCPB; Set date for next meeting.

Discussion: Presentation of proposals for 1997–98; Review old and new business.

Adjourn

Contact: Ray Prewett, 901 Business Park Drive, Mission, Texas 78572, (210) 584–1581.

Filed: July 30, 1997, 3:32 p.m.

TRD-9709891

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Wednesday, August 13, 1997, 11:00 a.m.

Inn of the Hills, Angora Room North, 1001 Junction Highway

San Angelo

Texas Sheep and Goat Commodity Board

AGENDA:

Opening Remarks and Welcome

Review and approval on minutes of last meeting- June 11, 1997

Review and approval of Fiscal Affairs

Reports of Officers and Directors

Discussion and Action: New Business: Review of telephone messages; Hot Spots Annual Reports/Renewal Requests; Addition to Hot-Spots Requests; Special Project Predator Control Request; Possible Name Change; Scheduling of next meeting. Unfinished business: Review status of Texas Animal Health Audit; Review Status of Various Committees and Projects; Predators in the Classroom Report; Report from Gary Nunley-Animal Damage Control

Discussion: Other Business

Adjourn

Contact: Minnie Savage, 233 West Twohig, San Angelo, Texas 76902–3543, (915) 659–8777.

Filed: July 31, 1997, 9:27 a.m.

TRD-9709908

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Monday, August 18, 1997, 8:00 a.m.

Harvey Hotel, Dallas Fort Worth, Highway 114 at Esters Boulevard

Irving

Texas Grain Sorghum Producers Board

AGENDA:

Call to Order

Discussion and Action: Minutes of last meeting; USFGC Update; Financial Reports; Supplemental Budget; Directors' Wives expenses; Grain elevator assessments; Approval of 1997–98 budget; New Building Plans/Update; Research Marketing Proposals

Discussion: Research/Marketing Updates; Other Business

Adjourn

Contact: Travis Taylor, P.O. Box 560, Abernathy, Texas 79311–0560, (806) 298–4501.

Filed: July 30, 1997, 3:33 p.m.

TRD-9709892

◆ ◆ ◆
Texas Commission on Alcohol and Drug Abuse (TCADA)

Wednesday, August 20, 1997, 11:00 a.m.

5201 University Boulevard, Great Room, Killam Library, Texas A&M International University

Laredo

Regional Advisory Consortium (RAC), Region 11

AGENDA:

Call to order; welcome and introduction of guests; approval of minutes; statewide service delivery program; membership plan; old business; new business; public comment/announcements; and adjournment.

Contact: Heather Harris, 9001 North IH-35, Suite 105, Austin, TX 78753, (512) 349-6669.

Filed: August 4, 1997, 9:13 a.m.

TRD-9710057

Texas Department of Banking

Wednesday, August 20, 1997, 1:30 p.m.

Finance Commission Building, 2601 North Lamar Boulevard

Austin

Prepaid Funeral Guaranty Fund Advisory Council

AGENDA:

A. Review and Approval of Minutes of the May 14, 1997 Prepaid Funeral Guaranty Fund Advisory Council Meeting.

B. Discussion of the Report of Activity of the Guaranty Fund for the Period September 1, 1996 — June 30, 1997.

C. Discussion of and Vote to Approve Claims of \$3,500 or Less Authorized by the Commissioner to be Paid From the Guaranty Fund Since May 14, 1997.

D. Discussion of and Vote to Approve the Guaranty Fund Investment Officer Report for the Period of March 1, 1997 to May 31, 1997.

E. Discussion of and Possible Vote to Approve Changes to the Investment Policy.

F. Discussion of and Possible Vote to Approve Changing the Investment Portfolio for the Guaranty Fund.

G. Review of Candidates for the 1988-1999 Consumer Member.

H. Discussion of Future Meeting Dates.

Contact: Everette D. Jobe, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-1300.

Filed: August 1, 1997, 8:42 a.m.

TRD-9709968

Texas Ethics Commission

Friday, August 8, 1997, 9:30 a.m.

Capitol Extension, Room E1.010

Austin

AGENDA:

The commission will take roll call; hear comments by the commissioners and the executive director, and communications from the public; approve the minutes of the July 11, 1997 meeting; briefing, discussion, and possible action to waive certain fines assessed for late filing of campaign finance reports, lobby reports, or personal financial statements; briefing, discussion, and possible action on a request for a second extension for the deadline to file a personal financial statement by an individual who was serving in Bosnia as a member of the United States Army Reserve; public discussion and possible action on the proposal and publication in the Texas Register of a new rule determining the form of the statement that may be used on political advertising to indicate that a candidate or political committee subscribes to the Code of Fair Campaign Practices; discussion and possible action in response to the following Advisory Opinion Request Numbers 409, 410, 411, 412, and 413; adjourn.

Contact: Tom Harrison, 201 East 14th Street, Austin, Texas 78701, (512) 463-5800.

Filed: July 31, 1997, 2:08 p.m.

TRD-9709937

◆ ◆ ◆
Texas Commission on Fire Protection

Thursday, Friday, August 14-15, 1997, 9:00 a.m.

12675 North Research

Austin

Fire Protection Personnel Advisory Committee

AGENDA:

1. Discussion and approval of minutes from the meeting held June 19 and 20, 1997.

2. Overview and staff briefing of agenda items.

3. Discussion and possible action concerning possible need for amendments resulting from new legislation (SB 371) relating to fire protection personnel and local fire departments and volunteer fire fighters and volunteer fire departments regulated under Government Code, Chapter 419, including but not limited to, consolidation of standards manuals for paid and volunteer fire service personnel and changes to the following chapters: 37 TAC Chapter 421, Standards for Certification; 37 TAC Chapter 423, Fire Suppression; 37 TAC Chapter 425, Fire Protection Personnel Instructors; 37 TAC Chapter 427, Certified Training Facilities; 37 TAC Chapter 429, Minimum Standards for Fire Inspectors; 37 TAC Chapter 431, Minimum Standards for Fire and Arson Investigators; 37 TAC Chapter 435, Fire Fighter Safety; 37 TAC Chapter 437, Fees; 37 TAC Chapter 439, Examinations for Certification; 37 TAC Chapter 441, Continuing Education; 37 TAC Chapter 443, Certification Curriculum Manual; 37 TAC Chapter 445, Administrative Inspections and Penalties; 37 TAC Chapter 449, Head of a Fire Department; 37 TAC Chapter 447, Part-Time Fire Protection Employee; 37 TAC Chapter 451, Fire Cause and Origin Investigator; 37 TAC Chapter 495, Regulation of Nongovernmental Departments.

Contact: Carol Menchu, 12675 North Research, Austin, Texas 78759, (512) 919-7100.

Filed: August 1, 1997, 10:46 a.m.

TRD-9709982



Texas Growth Fund

Monday, August 11, 1997, 11:00 a.m.

1000 Red River

Austin

Board of Trustees

AGENDA:

1. Review and approve minutes of the Special Meeting of the Board of Trustees held on April 1, 1997.
2. Review and approve Treasurer's Report.
3. Review and approve Resolutions designating signatories on Texas Commerce Bank checking accounts.
4. Review and approve invoices from Vinson & Elkins, L.L.P.
5. Discuss publicly traded stock of portfolio companies after IPO.
6. Receive an activity report from TGF Management Corp.
7. Review and approve TGF Management Corp.'s Third Quarter 1997 Budget Request.
8. Review and approve proposed investment(s).
9. Such other matters as may come before the Board of Trustees.

Contact: Janet Waldeier, 100 Congress Avenue, Suite 980, Austin, Texas 78701, (512) 322-3100.

Filed: August 1, 1997, 10:13 a.m.

TRD-9709978

Texas Department of Housing and Community Affairs

Monday, August 11, 1997, 9:00 a.m.

507 Sabine Street, Room 437

Austin

Finance Committee Meeting

AGENDA:

The Finance Committee of the Board of the Texas Department of Housing and Community Affairs will meet to consider and possibly act upon the following: Minutes of April 20, 1997 and June 30, 1997; Budget for 1997-98; Investment Policy; Remarketing of Multi-Family Bonds for Windcrest Apartments; Transfer Ownership Relating to Summer Bend Apartments; Execution of Release for Multi-family Revenue Bonds for Wildwood Apartments; Anducement Resolution for Non-Profit Housing Corporation for Greater Houston, Inc.; Amended Resolution for Single Family Series 1997 A, B, and C; Executive Session for Personnel Matters; Anticipated Litigation (Potential or Threatened) Personnel Matters regarding duties and responsibilities in relationship to Budget under Sec. 551.074 Texas Government Code; Consultation with Attorney; Action in Open Session on items discussed in Executive Session; Adjourn.

Contact: L.P. Manley, 507 Sabine, #900, Waller Creek Office Building, Austin, TX 78701, (512) 475-3934.

Filed: August 1, 1997, 3:24 p.m.

TRD-9710029

Texas Department of Human Services (TDHS)

Friday, August 8, 1997, 10:00 a.m.

701 West 51st Street, East Tower, Public Hearing Room

Austin

Board

AGENDA:

1. As authorized by the Texas Open Meetings Act, Government Code, §551.074, the Board will meet in executive session to consider candidates for the position of Commissioner of Human Services. 2. The Board will reconvene in open session to take action, if necessary, resulting from discussion in executive session.

Contact: Sherron Heinemann, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-3048.

Filed: July 31, 1997, 4:00 p.m.

TRD-9709958



State Independent Living Council

Monday, Tuesday, August 25-26, 1997, 9:00 a.m. and 9:00 a.m. respectively

Doubletree Hotel, 6505 North IH35

Austin

AGENDA:

Call to Order; Welcome; Members; State IL Structure; SILC Organization; SILC Function; Public Comment; Independent Living; SILC Budget; Action Plan; Needs Assessment; Travel Policy; Upcoming Meetings

Contact: John Meinkowsky, 5555 North Lamar, Suite J-125, Austin, Texas 78751, (512) 467-0744.

Filed: July 31, 1997, 3:04 p.m.

TRD-9709949



Texas Department of Insurance

Monday, August 18, 1997, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket No. 454-97-0508.D. In the matter of Aetna Dental Care of Texas (cont. from 5-15-97).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, TX 78701, (512) 463-6328.

Filed: August 4, 1997, 10:07 a.m.

TRD-9710082



Monday, August 18, 1997, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100
Austin

AGENDA:

Docket No. 454-97-1038.C. To consider whether disciplinary action should be taken against Suzie A. Chase, Wichita Falls, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's license issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, TX 78701, (512) 463-6328.

Filed: August 4, 1997, 10:00 a.m.

TRD-9710081



Monday, August 18, 1997, 10:00 a.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100
Austin

AGENDA:

Docket No. 454-96-1294.D. Prehearing conference in the matter of Thomas K. Lawless d/b/a National Processing Center.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, TX 78701, (512) 463-6328.

Filed: August 4, 1997, 10:10 a.m.

TRD-9710083



Tuesday, August 19, 1997, 1:00 p.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100
Austin

AGENDA:

Docket No. 454-97-1253.C. To consider whether disciplinary action should be taken against Frank D. Alexander, San Antonio, Texas, who holds a Solicitor's License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, TX 78701, (512) 463-6328.

Filed: August 4, 1997, 10:06 a.m.

TRD-9710080

Texas Department of Licensing and Regulation

Monday, August 4, 1997, 8:30 a.m.

E.O. Thompson Building, 920 Colorado, Fourth Floor, Conference Room

Austin

Texas Commission of Licensing and Regulation

AGENDA:

1. Call to Order.
2. Roll Call.
3. Discussion to exceed FTE cap in accordance with Sect. 34 General App. Act 1998-1999.

4. Discussion to exceed 1996 FY Capitol budget for purchase of carpeting in accordance with Article 9100 Section 12(b) and Chapter 60 TAC 60.25(b).

5. Adjournment.

Contact: Tommy V. Smith, (512) 4463-7357.

Filed: August 1, 1997, 8:09 a.m.

TRD-9709964

Texas State Board of Medical Examiners

Thursday, August 7, 1997, 9:00 a.m.; Saturday, August 9, 1997, 8:30 a.m.

333 Guadalupe, Tower 2, Suite 225

Austin

Full Board

AGENDA:

The agenda includes executive session to consult with counsel regarding pending or contemplated litigation; a proposal for decision relating to Hugo A. Ramirez, M.D.; demonstration of the Administrators in Medicine DocFinder; a request for termination of suspension relating to Lawrence C. Runke, M.D.; public hearing and action regarding cancellation of licenses for nonpayment and by request; public hearing and consideration of final adoption of proposed rules; approval of orders; approval of minutes; resolutions; approval of the Telemedicine Committee as a standing committee of the board; approval of Ad Hoc committee to Study Complementary and Alternative Medicine; approval of Ad Hoc committee for Physicians in Training; request for Attorney General Opinion; executive director's report; and committee reports and approval of action items from committees meeting during August 7-9, 1997.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018, (512) 305-7016; fax: (512) 305-7008.

Filed: July 30, 1997, 4:15 p.m.

TRD-9709893



Thursday, August 7, 1997, 10:30 a.m.

333 Guadalupe, Tower 3, Suite 610

Austin

Disciplinary Process Review Committee

AGENDA:

Call to order

May, June and July Enforcement Reports

Discussion, recommendation, and possible action regarding alternative medicine

Discussion, recommendation, and possible action regarding rule for medical record cost and release of psychiatric medical records

Consideration and possible action concerning Senate bill 1607 relating to retention of medical records

Discussion, recommendation, and possible action regarding Compliance Department procedures

Executive session to review selected files and cases recommended for dismissal by informal settlement conferences*

*Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code, as related to Article 4495b, 2.07(b), 4.05(c), 5.06(s)(1), and 1994 Attorney General Opinion, number H-484.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768–2018, (512) 305–7016; fax: (512) 305–7008.

Filed: July 30, 1997, 4:16 p.m.

TRD-9709894

◆ ◆ ◆

Thursday, August 7, 1997, 10:30 a.m.

333 Guadalupe, Tower 2, Suite 225

Austin

Joint Meeting of Endorsement and Examination Committees

AGENDA:

Call to order

Roll Call

Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code, as related to Article 4495b, 2.07(b), and 2.09(o), Texas Revised Civil Statutes to consult with counsel regarding pending or contemplated litigation.

Letters of eligibility to practice in the county of graduation relating to §3.04(g)(3) of the Medical Practice Act [formerly §5.035(a)(4)]

Discussion/recommendation on rehabilitation orders of other state medical boards

Update on the Federation of State Medical Boards' Credentialing Verification Service (FCVS)

Review of applications for licensure for a determination of eligibility referred to the committee by the executive director

Discussion/recommendation of board rules pertaining to Fifth Pathway applicants and temporary licensure for applicants.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768–2018, (512) 305–7016; fax: (512) 305–7008.

Filed: July 30, 1997, 4:16 p.m.

TRD-9709895

◆ ◆ ◆

Thursday, August 7, 1997, 1:00 p.m.

333 Guadalupe, Tower 2, Suite 225

Austin

Endorsement Committee

AGENDA:

Call to order

Roll Call

Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code and Article 4495b, §§2.07(b)

and 2.09(o), Texas Revised Civil Statutes to consult with counsel regarding pending or contemplated litigation

Review of licensure applicants referred to the Endorsement committee by the executive director for determinations of eligibility for licensure*

Review of licensure applicants to be considered for permanent licensure by endorsement

* Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code and Article 4495b, §§2.07(b) and 2.09(o), Texas Revised Civil Statutes

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768–2018, (512) 305–7016; fax: (512) 305–7008.

Filed: July 30, 1997, 4:16 p.m.

TRD-9709896

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Thursday, August 7, 1997, 1:00 p.m.

333 Guadalupe, Tower 3, Suite 610

Austin

Examination Committee

AGENDA:

Call to order

Roll Call

Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code and Article 4495b, §§2.07(b) and 2.09(o), Texas Revised Civil Statutes to review applicant files for licensure

Review of licensure applicants *

Review of the May 1997 United States Medical Licensing Exam Step 3 and Texas Medical Jurisprudence Examination results

Review of examination applicants complete for consideration of licensure

* Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code and Article 4495b, §§2.07(b) and 2.09(o), Texas Revised Civil Statutes

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768–2018, (512) 305–7016; fax: (512) 305–7008.

Filed: July 30, 1997, 4:16 p.m.

TRD-9709897

◆ ◆ ◆

Friday, August 8, 1997, 8:30 a.m.

333 Guadalupe, Tower 3, Suite 610

Austin

Executive Committee

AGENDA:

Call to order

Roll Call

Discussion, recommendation and possible action regarding development of an assessment tool for outlining goals to be accompanied to assist in the evaluation of the executive director.

Discussion, recommendation and possible action regarding development of an assessment tool for staff evaluation of managers.

Discussion, recommendation and possible action regarding development of a self-assessment tool for board member evaluation.

Discussion, recommendation and possible action regarding salary increase for executive director.

Adjourn.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768–2018, (512) 305–7016; fax: (512) 305–7008.

Filed: July 31, 1997, 10:54 a.m.

TRD-9709915

◆ ◆ ◆

Friday, August 8, 1997, 9:00 a.m.

333 Guadalupe, Tower 2, Suite 225

Austin

Finance Committee

AGENDA:

Call to order

Roll Call

Discussion of the Board's June 1997 Financial Statement

Legislative appropriation update

Adjourn

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768–2018, (512) 305–7016; fax: (512) 305–7008.

Filed: July 31, 1997, 10:54 a.m.

TRD-9709916

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Friday, August 8, 1997, 9:30 a.m.

333 Guadalupe, Tower 2, Suite 225

Austin

Legislative Committee

AGENDA:

Call to order

Roll Call

Update from the 75th Legislature and impacts on the board. Discussion, recommendation, and possible action relating to rules to implement legislation.

Adjourn

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768–2018, (512) 305–7016; fax: (512) 305–7008.

Filed: July 31, 1997, 11:48 a.m.

TRD-9709925

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Friday, August 8, 1997, 11:30 a.m.

333 Guadalupe, Tower 2, Suite 225

Austin

Public Information Committee

AGENDA:

Call to order

Roll Call

Discussion, recommendation and possible action on newsletter articles

Adjourn

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768–2018, (512) 305–7016; fax: (512) 305–7008.

Filed: July 31, 1997, 11:49 a.m.

TRD-9709927

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Friday, August 8, 1997, 1:00 p.m.

333 Guadalupe, Tower 2, Suite 225

Austin

Standing Orders Committee

AGENDA:

Call to order and Roll Call

Discussion, recommendation and possible action regarding anesthesia assistants. Invited guests will present information.

Review and consideration of approval of acupuncture licensure applications as recommended by the Texas State Board of Acupuncture Examiners.

Review of investigative files for closure as recommended by the Texas State Board of Acupuncture Examiners.

Discussion, recommendation and possible action on rules recommended from the Texas State board of Acupuncture Examiners.

Discussion, recommendation and possible action on rules recommended from the Texas State Board of Physician Assistant Examiners.

Discussion, recommendation and possible action on amendments to Chapter 193, Standing Delegation Orders.

Discussion, recommendation and possible action on amendments to Chapter 179, Investigations, relating to reporting by physician assistants and acupuncturists.

Discussion, recommendation and possible action on new rules relating to Non-Certified Radiologic Technicians, Chapter 194 and the repeal of current rule 193.7.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768–2018, (512) 305–7016; fax: (512) 305–7008.

Filed: July 31, 1997, 11:57 a.m.

TRD-9709928

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Friday, August 8, 1997, 4:30 p.m.

333 Guadalupe, Tower 2, Suite 225

Austin

Ethics Committee

AGENDA:

Call to order

Roll Call

Consideration and approval of article for Newsletter submitted by Mary Anne Bobinski

Legislative update regarding "gag rule" provisions in managed care contracts.

Discussion, recommendation, and possible action relating to advertising by sponsors of continuing medical education courses.

Adjourn

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018, (512) 305-7016; fax: (512) 305-7008.

Filed: July 31, 1997, 11:48 a.m.

TRD-9709924

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Friday, August 8, 1997, 5:30 p.m.

333 Guadalupe, Tower 2, Suite 225

Austin

Ad Hoc Committee on Telemedicine

AGENDA:

Call to order

Roll Call

Discussion, recommendation and possible action relating to the improper delegation of telemedicine.

Discussion, recommendation and possible action relating to an amendment to Rule 161.1(g) outlining the responsibilities of the Telemedicine Committee as a permanent committee of the board.

Discussion, recommendation and possible action relating to an amendment to Rule 174, Telemedicine, outlining annual registration requirements for persons who are issued special purpose licenses for practice of medicine across state lines.

Discussion, recommendation and possible action relating to possible rule changes as a result of recent legislation.

Discussion, recommendation, and possible action relating to unlicensed practice of medicine policy statement.

Adjourn

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018, (512) 305-7016; fax: (512) 305-7008.

Filed: July 31, 1997, 11:48 a.m.

TRD-9709923

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Friday, August 8, 1997, 3:00 p.m.

333 Guadalupe, Tower 2, Suite 225

Austin

Non-Profit Health Organizations Committee

AGENDA:

Call to order

Roll Call

Consideration and possible action on applications for original certification of non-profit health organizations

Consideration and possible action on biennial applications for recertification of non-profit health organizations

Consideration and possible action on compliance information for continued certification of non-profit health organizations

Adjourn

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018, (512) 305-7016; fax: (512) 305-7008.

Filed: July 31, 1997, 11:48 a.m.

TRD-9709926

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Midwestern State University

Thursday, August 7, 1997, 1:30 p.m.

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

Board of Regents Executive Committee

AGENDA:

The Executive Committee will consider the minutes of the committee meeting held May 8, 1997. The Committee will consider recommendations for Board of Regents meeting dates in 1997-98, outside counsel agreement for 1997-98, general architectural services for MSU in 1997-98, purchase of equipment for Clark Student Center, Information Systems Biennial Operating Plan for Fiscal Years 1998 and 1999 and naming of university facilities.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (940) 689-4212.

Filed: August 1, 1997, 3:59 p.m.

TRD-9710039

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Thursday, August 7, 1997, 2:30 p.m.

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

Board of Regents Finance and Audit Committee

AGENDA:

The Finance and Audit Committee will review minutes of the committee meeting 5/8/97 and will receive recommendations and discuss financial disclosure statements, the internal audit plan for 1997-98, the university investment policy, bank depository and pledge of collateral agreement, approval of broker/dealers for the university, fee waivers (Student Union/Center Fee and Student

Service Fees), disabled peace officers tuition and fee waiver, foreign language course fee increase, GED fee increase, reduction of investment income, items \$30,000 and under in FY 96-97 approved by President per Board Authorization, HEAF allocation for 1997-98 and the 1997-98 university operating budget; Discussion of specific personnel and salary related matters, including discussion of the university president's salary, will be conducted in Executive Session as allowed by the Texas Government Code, Chapter 551.074.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (940) 689-4212.
Filed: August 1, 1997, 3:59 p.m.

TRD-9710038

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Thursday, August 7, 1997, 3:30 p.m.

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

Board of Regents Personnel and Curriculum Committee

AGENDA:

The Personnel and Curriculum Committee will review the minutes of the committee meeting held May 8, 1997 and will receive information concerning summer session enrollment and small class reports, as well as last day enrollment reports for the spring semester. The committee will consider recommendations and discuss position changes in the FY 96-97 budget, change in admissions standards, Policy Manual revisions and additions (including faculty performance review, telecommunications based courses, whistle blowing policy and disability grievance procedures).

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (940) 689-4212.
Filed: August 1, 1997, 3:59 p.m.

TRD-9710037

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Thursday, August 7, 1997, 4:30 p.m.

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

Board of Regents Student Services Committee

AGENDA:

The Student Services Committee will consider the minutes of the committee meeting held May 8, 1997 and receive a report on student government activities and summer camp update.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (940) 689-4212.
Filed: August 1, 1997, 3:59 p.m.

TRD-9710036

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Thursday, August 7, 1997, 4:45 p.m.

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

Board of Regents Development Committee

AGENDA:

The Development Committee will review the minutes of the committee meeting held May 8, 1997. A summary of gifts, grants and pledges received 9/1/97-7/11/97 will be presented for information of the board. Resolutions of Appreciation will be presented for approval as necessary.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (940) 689-4212.
Filed: August 1, 1997, 3:59 p.m.

TRD-9710035

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Thursday, August 7, 1997, 5:00 p.m.

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

Board of Regents Athletic Committee

AGENDA:

The Athletics Committee will consider the minutes of the committee meeting held May 8, 1997 and will receive information concerning the Title IX compliance annual review, 1997 M-Club campaign report and 1997-98 corporate sponsors.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (940) 689-4212.
Filed: August 1, 1997, 3:58 p.m.

TRD-9710034

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Friday, August 8, 1997, 9:00 a.m.

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

Board of Regents

AGENDA:

The Board of Regents will consider the minutes of the May 8, 1997 Board of Regents meetings and will review financial reports for the months of April, May and June 1997. Board of Regents committee assignments for 1997-98 will be made by the chairman of the board. The Board will consider recommendations and receive information from the Executive, Finance and Audit, Personnel and Curriculum, and university Development Committees of the board. Reports will be presented by the Student Services and Athletics Committees and by the president of the university concerning developments at MSU. The Board of Regents of Midwestern State University reserves the right to discuss any items in Executive Session whenever legally justified and properly posted in accordance with the Texas Government Code Chapter 551.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (940) 689-4212.
Filed: August 1, 1997, 4:52 p.m.

TRD-9710047

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Texas Natural Resource Conservation Commission

Thursday, August 7, 1997, 9:00 a.m.

Room 201S, Building E, 12100 Park 35 Circle

Austin

AGENDA:

This meeting is a work session for discussion between Commissioners and staff. No public testimony or comment will be accepted except by invitation of the Commission.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: July 30, 1997, 2:43 p.m.

TRD-9709887



Thursday, August 14, 1997, 3:00 p.m.

Natural Resources Center, Room 1003, Texas A&M University-Corpus Christi

Corpus Christi

AGENDA:

I. Call to Order/Introductions/Approval of Minutes

II. Program Update

III. Discussion of Draft Coastal Bend Bays Plan (Narrative Portions)

IV. Ranking of Action Items

V. Discussion of Action Plan Demonstration Project

VI. Discussion of Base Program Support Funding Targets

VII. Additional Items/ Adjourn.

Contact: Richard Volk, TAMU-CC, 6300 Ocean Drive, Suite 3300, Corpus Christi, Texas 78412, (512) 980-3420.

Filed: July 31, 1997, 1:20 p.m.

TRD-9709932



Thursday, August 21, 1997, 7:00 p.m.

Andrews Chamber of Commerce, 700 West Broadway

Andrews

AGENDA:

For an informal public meeting concerning an application by TEC-SAFE, L.L.C. to the Texas Natural Resource Conservation Commission for Research, Development, and Demonstration permit (Proposed Permit Number 50366) to conduct research and development of innovative and experimental waste treatment technologies. The application requests authorization for the construction and operation of two proposed tanks, and one proposed container storage and process treatment technology building for the storage of hazardous and non-hazardous waste for the purpose of developing waste treatment technologies. The applicant will operate a research and development facility to develop innovative and experimental hazardous waste treatment technology and/or processes. The facility is located on State

Highway 176, on approximately 100 acres, approximately 30 miles west of Andrews in Andrews County, Texas.

Contact: Office of Public Assistance, M.D. 108, P.O. Box 13087, Austin, Texas 78711-3087, 1-800-687-4040.

Filed: August 1, 1997, 9:19 a.m.

TRD-9709970



Thursday, September 4, 1997, 10:00 a.m.

Police Department/Municipal Court Building, 430 North Brazosport Boulevard

Freeport

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on an application filed with the Texas Natural Resource Conservation Commission by TREASURE ISLAND MUNICIPAL UTILITY DISTRICT for Proposed Permit Number 13816-01 to authorize the discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 50,000 gallons per day. The applicant is also requesting a variance to the buffer zone requirements pursuant to 30 TAC 309.13(e)(1)(B).

The wastewater treatment facilities are to be located approximately 3,450 feet southeast of Vasak Bridge on Brazoria County Road 257 at San Luis Pass, approximately 14 miles northeast of the City of Surfside and 28 miles southwest of the City of Galveston in Brazoria County, Texas.

Contact: Pablo Carrasquillo, P.O. Box 13025, Austin, Texas 78711-3025, (512) 475-3445.

Filed: August 1, 1997, 9:20 a.m.

TRD-9709971



Board of Nurse Examiners

August 12, 1997, at 9:00 a.m.

333 Guadalupe Street, Tower 3, Suite 460

Austin

Eligibility and Disciplinary Committee

AGENDA:

The Eligibility and Disciplinary Committee will meet to consider and take action on the following:

Possible Disciplinary Action: Sharon Kay Richey, TX #533405

Motions for Rehearing: Darlene Marshall Ruffin, TX #222488; Barbara A. Petri Kinstley, TX #220484; and Brenda Jean Smith, TX #507750

Agreed Orders: Dawn Desiree Adams, TX #561592; Evelyn M. Bass, TX #537053; Robert E. Blake, TX #256347; Sally Caroline Dent, TX #547209; Wanda L. England, TX #716387; Paula Denise Fortenberry, TX #554397; Nancy Louise Friesen, TX #607518; Oscar Marino Gonzalez, TX #567759; Roberta Maxine Kalmanson, TX #536697; Kathryn Ann Kinalidis, TX #437631; Frances Janet Meets, TX #552375; Patricia Susan Rice, TX #522864; Judith Robinson,

TS #599961; Giselle Issa Talia, TX #623421; Jeff5rey F. Vogel, TX #518481.

ALJ Proposals for Decision: Barbara Ann Kessler, TX #626439; Rita A. Kucmierz, TX #505877

Exceptions to Previous Board Orders: Ngozi Alaribe, TX #532526; Pamela R. Chapman, TX #521661.

Eligibility Requests of: Joan DeLeon Salazar, Petitioner for Declaratory Order

Declaratory Orders of: Julie Michelle Brown; Ashley Michelle Derr; Larisa Ann Morales; Liane Jacobson; Luan Ngoc-Thi Nguyen; Norma Jean DeLeon

Applicant for Consideration: Roman Daniel Jenks, Applicant for Initial Licensure

Conditional Eligibility Orders of the following Petitioners/Applicants; Tiffany Nicole Ates, Petitioner for Declaratory Order; Paula Jean Deakin, Petitioner for Declaratory Order; Hector Garcia, Petitioner for Declaratory Order; Mary Helen Gonzalez, Applicant for Endorsements; Jeanette Boylan Powers, Petitioner for Declaratory Order; Alison M. Priestley, Applicant for Initial Licensure; Lorrane Lee Reyna, Petitioner for Declaratory Order.

Contact: Cheryl Sepulveda, Box 140466, Austin, Texas 78714, (512) 305-6824.

Filed: August 1, 1997, 1:41 p.m.

TRD-9710008

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August 15, 1997, at 9:30 a.m.

333 Guadalupe Street, Tower 2, Room 2.225

Austin

Nursing Practice Advisory Committee

AGENDA:

9:30 a.m. — Call to Order

Roll Call

Introduction of members and staff

Approval of October 31, 1997 Meeting Minutes

Approval of Agenda

9:45 a.m. — Charge to the Committee:

1. Review Historical Background of laser therapy and the Board's Position Statement #15.9 "Performance of Laser Therapy by RNs".
2. Review current available information on laser therapy, its uses, advantages and disadvantages
3. Consider the relationship of current uses of laser therapy, anticipated effects, and potential complications.
4. Review the finds in relation to the RN scope of practice for report to the Board.

11:30 a.m. —Working Lunch

12:30 p.m. — Open Forum

1:00 p.m. —Continue Committee Charge

2:30 p.m. — Summary

3:00 p.m. — Adjourn.

Contact: Mitchell Diaz, Box 140466, Austin, Texas 78714, (512) 305-6844.

Filed: August 4, 1997, 9:43 a.m.

TRD-9710067

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August 21–22, 1997, at 10:00 a.m. and 9:00 a.m. respectively

333 Guadalupe Street, Suite 3–460.

Austin

Advisory Committee on Education Distance Learning Technologies Subcommittee

AGENDA:

Call to Order

Approval of Minutes

Introduction of Members and Election of Chair

Draft policy of proposals to replicate Extended Campus/Extension Site

Revision of Board Guidelines on Extended Campus/Extension Site

New Business

Adjourn

Contact: Cheryl K. Rosipal, Box 430, Austin, Texas 78767, (512) 305-6816.

Filed: July 31, 1997, 1:45 p.m.

TRD-9709933

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Texas Board of Nursing Facility Administrators

Monday, August 11, 1997, 9:00 a.m.

Dallas Medallion, 4099 Valley View Lane, Main Salon, LBJ Freeway and Midway Road

Dallas

The committee will discuss and possibly act on: complaints (95–NFA-00149; 96–NFA-00185; 96–NFA-00190; 96–NFA-00193; 96–NFA-00245; 96–NFA-00246; 96–NFA-00261; 96–NFA-00282; 96–NFA-00285; 96–NFA-00273; 96–NFA-00278; 96–NFA-00284; 96–NFA-00286; 96–NFA-00288; 96–NFA-00289; 96–NFA-00290; 96–NFA-00291; 96–NFA-00292; 96–NFA-00293; 96–NFA-00295; 96–NFA-00297; 96–NFA-00299; 96–NFA-00301; 97–NFA-00001; 97–NFA-00002; 97–NFA-00003; 97–NFA-00005; 97–NFA-00006; 97–NFA-00007; 97–NFA-00008; 97–NFA-00010; 97–NFA-00013; 97–NFA-00016; 97–NFA-00019; 97–NFA-00022; 97–NFA-00024; 97–NFA-00028; 97–NFA-00031; 97–NFA-00032; 97–NFA-00035; 97–NFA-00037; 97–NFA-00042; 97–NFA-00048; 97–NFA-00050; 97–NFA-00052; 97–NFA-00061; 97–NFA-00068; 97–NFA-00069; 97–NFA-00070; 97–NFA-00071; 97–NFA-00072; 97–NFA-00077; 97–NFA-00084; 97–NFA-00085; 97–NFA-00087; 97–NFA-00089; 97–NFA-00094; 97–NFA-00097; 97–NFA-00098; 97–NFA-00099; 97–

NFA-00101; 97-NFA-00106; 97-NFA-00111; and 97-NFA-00181); and staff reports.

To request accommodation under the ADA, please contact Suzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Bobby Lane, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6787.

Filed: August 1, 1997, 3:53 p.m.

TRD-9710030



Monday, August 11, 1997, 10:30 a.m.

Dallas Medallion, 4099 Valley View Lane, Main Salon, LBJ Freeway and Midway Road

Dallas

The committee will discuss and possibly act on: approval of denial of requests for continuing education sponsorship (DiversiCare Management Services, The Inner Care Group, MedicoLegal Consultants, Mind Matters Seminars, Senior Information Services of America, Seniors We Are Adult Day Care, and Southwest Society on Aging); approval or denial of a request for academic course work and an internship program at the University of Scranton, Scarnton, PA; approval or denial of a second request for academic course work program at the Texas Memorial Medical Institute; approval or denial for a waiver of the 60-bed internship requirement from Dionicio R. Rivera; the American Health Care Association's request for continuing education for annual conferences; Texas Health Care Association's request to award six hours of continuing education for the seminar which was canceled after 4.5 hours; staff reports; and the chair report.

To request accommodation under the ADA, please contact Suzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Bobby Lane, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6787.

Filed: August 1, 1997, 3:54 p.m.

TRD-9710031



Tuesday, August 12, 1997, 9:00 a.m.

Dallas Medallion, 4099 Valley View Lane, Main Salon, LBJ Freeway and Midway Road

Dallas

The board will have roll call, introduce representative of the Texas Department of Human Services in attendance, discuss and possibly act on: committee reports (Education Committee and Complaints Committee); agreed order for LE; and order for TM; staff reports; interim executive secretary report; and board chair report.

To request accommodation under the ADA, please contact Suzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Bobby Lane, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6787.

Filed: August 1, 1997, 3:54 p.m.

TRD-9710032



Texas Optometry Board

Monday, August 11, 1997, 1:00 p.m.-Orientation with members, followed by committees on August 12, 1997 at 9:00 a.m.

333 Guadalupe Street, #2-420

Austin

AGENDA:

Orientation with new members to begin at 1:00 p.m. on August 11, followed by all committees meeting at 4:00 p.m.; on following day beginning at 9:00 a.m., regular board meeting to be held to consider reports of Secretary-Treasurer, executive director, legal counsel, and committee chairpersons; reports on conferences attended; election of officers; consider matters involving Health Professions Council; public comment time certain of 10:00 a.m.; report on IAB annual meeting held in June in St. Louis, Missouri, and Governor's Conference held in July; consider attendance at future meetings; establish Board meeting dates; consider request of FTC for input on Eyeglass rule I; Federal Fraud and Abuse Data Collection; H.B. 196 — mandatory release of contact lens prescription implementation; general mailing to licensees; legislative and budget reports; consider settlement agreements as a result of informal conferences held; Executive Session to be held in compliance with 551.071 of the Government Code to discuss contemplated and pending litigation with Board attorney and matters referred to Attorney General and to consider Executive Director's salary as authorized by the General Appropriations Act; consideration and possible vote on matters discussed in Executive Session.

Contact: Lois Ewald, 333 Guadalupe, Suite 2-420, Austin, Texas 78701, (512) 305-8500.

Filed: August 1, 1997, 11:56 a.m.

TRD-9709998



Texas Board of Physical Therapy Examiners

Saturday, August 9, 1997, 10:30 a.m.

San Antonio Marriott/River Walk, 711 East Riverwalk

San Antonio

Investigations Committee

AGENDA:

I. Call to Order

II. Review and possible action regarding the following cases: 96044, 96119, 96158, 96165, 96174, 96185, 97006, 97019, 97053, 97075, 97085, 97092, 97107, 97113, 97114, 97115, 97116, 97131, 97133, 97138, 97140, 97142, 97163, 97143, 97147, 97148, 97149, 97151, 97158, 97160, 97168, 97172, 97173, 97174, 97175, 97180, 97181.

Adjourn

Contact: Gerard Swain, 333 Guadalupe, Suite 2-510, Austin, Texas 78701, (512) 305-6900.
Filed: July 30, 1997, 2:48 p.m.

TRD-9709888

Saturday, August 9, 1997, 10:30 a.m.

San Antonio Marriott/River Walk, 711 East Riverwalk

San Antonio

Investigations Committee

REVISED AGENDA:

I. Call to Order

II. Review and possible action regarding the following cases: 96044, 96119, 96158, 96165, 96174, 96185, 97006, 97019, 97053, 97075, 97085, 97092, 97107, 97113, 97114, 97115, 97116, 97131, 97133, 97138, 97140, 97142, 97163, 97143, 97147, 97148, 97149, 97151, 97158, 97160, 97168, 97172, 97173, 97174, 97175, 97180, 97181.

Adjourn

Contact: Gerard Swain, 333 Guadalupe, Suite 2-510, Austin, Texas 78701, (512) 305-6900.

Filed: July 31, 1997, 9:08 a.m.

TRD-9709905

Texas State Board of Podiatric Medical Examiners

Friday, August 15, 1997, 10:00 a.m.

333 Guadalupe, Tower II, Room 400A

Austin

AGENDA:

Friday, August 15, 1997, 10:00 a.m.-Reading of minutes; President's report; Vice-President's report; Executive Director's report; Treasurer's report; public comments; discussion and possible adoption of rules that were published in the March 25, 1997 and July 15, 1997 Texas Register §371.1, 371.2, 371.3, 371.6, 375.11 and 379.1; discussion and possible proposal for publication in the Texas Register rule changes regarding date requirements for §378 continuing medical education; discussion and possible proposal for publication in the Texas Register, rule changes regarding charges for CME printouts and duplicate certificates in §379.1 fees; discussion and possible proposal for publication in the Texas Register rule changes regarding extending temporary license dates in §371.2(g) temporary license; proposal for decision and final order in the matter of the license of Gary Mellon, DPM; discussion and possible action regarding lifting the restriction on the license of Spencer Eugene Nichols, DPM; report from Dr. Valenza regarding examinations and exam development committee; discussion and possible adoption of questions to be used on the next Board survey; review and possible revisions to job posting for Investigator III; complaint status report and set time, place and date for next scheduled meeting.

Contact: Janie Alonzo, P.O. Box 12216, Austin, Texas 78711-2216, (512) 305-7000.

Filed: August 1, 1997, 12:52 p.m.

TRD-9710004

Texas Department of Protective and Regulatory Services

Friday, August 15, 1997, 9:00 a.m.

701 West 51st Street, Board Room, John H. Winters Center, First Floor East Tower

Austin

AGENDA:

The staff of the Texas Department of Protective and Regulatory Services (PRS) will conduct a meeting open to the public to receive input in rule development for the regulation of assessment services offered by residential child care facilities and child-placing agencies. The meeting is not a meeting by the Board, but is a meeting held by PRS staff to aid in the development of rules required by Senate Bill 359 of the 75th Legislature, prior to presenting them to the board for publication for comment. If you are unable to attend the meeting, but wish to provide input in the rule development for the regulation of assessment services, written comments will be accepted if received by August 29, 1997. Please address written comments to the attention of Joanna Taylor. Written comments may be mailed to MC E-550, P.O. Box 149030, Austin, Texas, 78714-9030, delivered to the receptionist in the lobby of the John H. Winters Center, or faxed to (512) 438-3848.

Persons with disabilities planning to attend this meeting who may need auxiliary aids or services are asked to contact Sasha Rasco, (512) 438-3249 by August 11, 1997 so that appropriate arrangements can be made.

Contact: Joanna Taylor, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-3259.

Filed: August 1, 1997, 1:32 p.m.

TRD-9710006

Friday, August 15, 1997, 1:00 p.m.

701 West 51st Street, Board Room, John H. Winters Center, First Floor East Tower

Austin

AGENDA:

The staff of the Texas Department of Protective and Regulatory Services (PRS) will conduct a meeting open to the public to receive input on the development of rules governing public hearing and notices required before the issuance or expansion of a residential child care license in certain counties. The meeting is not a meeting by the Board, but is a meeting held by PRS staff to aid in the development of rules required by Bill 359 of the 75th Legislature, prior to presenting them to the board for publication for comment. If you are unable to attend the meeting, but wish to provide input in the rule development for public hearings and notices required before the issuance or expansion of residential child care licenses, written comments will be accepted if received by August 29, 1997. Please address written comments to the attention of Joanna Taylor. Written comments may be mailed to MC E-550, P.O. Box 149030, Austin,

Texas, 78714-9030, delivered to the receptionist in the lobby of the John H. Winters Center, or faxed to (512) 438-3848.

Persons with disabilities planning to attend this meeting who may need auxiliary aids or services are asked to contact Sasha Rasco, (512) 438-3249 by August 11, 1997 so that appropriate arrangements can be made.

Contact: Joanna Taylor, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-3259.

Filed: August 1, 1997, 1:32 p.m.

TRD-9710007

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Texas Low-Level Radioactive Waste Disposal Authority

Friday, August 15, 1997, 9:00 a.m.

Oriental Room, Eighth Floor, St. Joseph's Hospital

Houston

Board of Directors Workshop

AGENDA:

The Board of Directors will conduct a workshop to review the proposed contracts for fiscal year 1998.

Contact: Lawrence R. Jacobi, Jr. 7701 North Lamar Boulevard, Suite 300, Austin, Texas 78752, (512) 451-5292,
Filed: August 4, 1997, 8:05 a.m.

TRD-9710051

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Friday, August 15, 1997, 10:30 a.m.

Oriental Room, Eighth Floor, St. Joseph's Hospital

Houston

Board of Directors

AGENDA:

The chairman will call the board meeting to order, introduce the new board member, Claudia Ball, and adjourn the open meeting, and convene in executive session to receive advice of the Authority's attorneys concerning contemplated litigation related to the Authority's license application pending before the Texas Natural Resource Conservation Commission (TNRCC) and evaluate the agency's general manager's job performance. The board will open the meeting to the public to approve minutes of their previous meeting; receive reports of the committees; hear the general manager's reports on the year-to-date financial status, consider budget adjustments and the approval of the 1998 operating budget; discuss status of the license hearings before SOAH, discuss the status of the Texas and other low-level waste compacts, and discuss director's and officer's liability insurance; be given status reports on demonstration cap project at the Faskin Ranch disposal site, and review quarterly contract reports; hear a report on the community development and county working groups, public information program, and the quality assurance program. The board will consider: approval of the revised Hudspeth County master plan; the adoption of a proposed amendment to the contract with the UT-Bureau of Economic Geology; approval of proposed contracts for

fiscal year 1998, adoption of personnel action regarding the general manager and deputy general manager-legal, approval of financial statements for L.R. Jacobi and L.H. Matthews, and the approval of a resolution of appreciation for David Ojeda. The board will consider possible rulemaking concerning use of the Texas Facility by in-state waste generators. The board will hear public comments before adjourning.

Contact: Lawrence R. Jacobi, Jr. 7701 North Lamar Boulevard, Suite 300, Austin, Texas 78752, (512) 451-5292,
Filed: August 4, 1997, 8:05 a.m.

TRD-9710052

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Railroad Commission of Texas

Tuesday, August 12, 1997, 9:30 a.m.

1701 North Congress, First Floor Conference Room 1-111

Austin

AGENDA:

The Railroad Commission of Texas will consider various applications and other matters within the jurisdiction of the agency including oral arguments at the time specified on the attached agenda. The Railroad Commission of Texas may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received.

The Commission may meet in Executive Session on any items listed above as authorized by the Open Meetings Act.

Contact: Lindil C. Fowler, Jr. P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7033.

Filed: August 1, 1997, 4:14 p.m.

TRD-9710043

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State Securities Board

Monday, August 25, 1997, 9:00 a.m.

William P. Clements Building, 300 West 15th Street, Suite 502

Austin

Administrative Hearing

AGENDA:

A hearing will be held to determine whether cease and desist, revocation, fine and denial of registration orders will be issued against eighteen Respondents in a previously filed case, IN THE MATTER OF THE EXCHANGE HOUSE, INC., ET. AL., State Office of Administrative Hearing Docket Number 312-97-0760.

Contact: Davis Grauer, 200 East 10th Street, Fifth Floor, Austin, Texas 78701, (512) 305-8392.

Filed: July 30, 1997, 2:19 p.m.

TRD-9709886

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Telecommunications Infrastructure Fund Board

Friday, August 8, 1997, 8:30 a.m.

1000 Red River, Fifth Floor Board Room
Austin

Finance and Audit Committee

AGENDA:

- I. Call Committee Meeting to Order Open Meeting/Quorum Call — Chairman Roger Benavides
- II. Minutes from Prior Meetings
- III. Review Financial Report
- IV. Discuss Agency Operations Budget
- V. Discuss the 1998 Fiscal Budget
- VI. Presentation by TEA Regarding Funds Spent in 1996–97 and Projected FY 98/99 Budget
- VII. Future Agenda Items
- VIII. Adjourn Committee Meeting

Contact: Dawn Efaw, 1000 Red River, Suite E208, Austin, Texas 78701, (512) 469–3070.

Filed: July 31, 1997, 3:23 p.m.

TRD-9709951



Friday, August 8, 1997, 9:30 a.m.

1000 Red River, Fifth Floor Board Room
Austin

Libraries and Telemedicine Committee

AGENDA:

- I. Call Committee Meeting to Order Open Meeting/Quorum Call — Chairman John Collins
- II. Minutes from Prior Meetings
- III. Reports from Advisory Committees
- IV. Review and Possible Adoption of Planning Grants and Demonstration Grants
- V. Future Agenda Items
- VI. Adjourn Committee Meeting

Contact: Dawn Efaw, 1000 Red River, Suite E208, Austin, Texas 78701, (512) 469–3070.

Filed: July 31, 1997, 3:23 p.m.

TRD-9709952



Friday, August 8, 1997, 10:30 a.m.

1000 Red River, Fifth Floor Board Room
Austin

AGENDA:

- I. Call to Order Open Meeting/Quorum Call — Chairman Bill Mitchell

II. Presentation by Texas Tech University's Extended Learning Elementary Curriculum

III. Presentation on Texas Net Results

IV. Minutes from Prior Meetings

V. Agency Update

VI. Financial Report

VII. Chairman Appointments Board Committee

VIII. Discussion and Possible Adoption of a Policy for Accepting Gifts

IX. Discussion on Evaluation Procedures for Grant Applications

X. Discussion and Possible Adoption of Grant Offerings for Internet Connectivity for Libraries

XI. Discussion and Possible Adoption of Non-Competitive Grant Offerings for Internet Access for Public Schools Discussion on TIF Teams

XII. Discussion and Possible Action of Grant Offerings for Discovery Projects

XIII. Future Agenda Items

XIV. Adjourn Open Meeting

Contact: Dawn Efaw, 1000 Red River, Suite E208, Austin, Texas 78701, (512) 469–3070.

Filed: July 31, 1997, 3:23 p.m.

TRD-9709953



The Texas State University System

Wednesday, August 6, 1997, 11:00 a.m.

Cibolo Creek Ranch, conference room

Shafter

Board of Regents

AGENDA:

The Board plans a retreat work session reviewing the mission, role, challenges, goals and vision of the System and its components with the Universities' presidents and System Administration Staff. (Where appropriate and permitted by law, Executive Sessions may be held for the above listed subjects.)

Contact: Lamar Urbanovsky, 333 Guadalupe, Tower III, Suite 810, Austin, Texas 78701, (512) 463–1808.

Filed: July 31, 1997, 3:33 p.m.

TRD-9709955



Thursday-Friday, August 7–8, 1997, 8:30 and 8:45 a.m.respectively

Second Floor Conference Room, Briscoe Administration Building, Sul Ross State University

Alpine

Board of Regents

AGENDA:

Review of matters of the Board and the Universities in the System including; all matters of curriculum including program and name changes; all matters of construction projects, contracts and documentation; financial matters of the System Office and the Universities in the System including budgetary changes, operating budgets, fees, internal audit plans, bond counsel and financial advisory selections, broker/dealer authorizations, end-of-fiscal year compliance with statutes and codes, contract approvals, purchases of furnishings and equipment, land purchases, sales, leases and easements, holiday schedules, revised Institutional Mission Statements, gifts and contributions for each university and the system administration; discussion of pending or contemplated litigation, settlements, or other legal matters; personnel actions including promotions, resignations, retirements, tenure, emeritus status, resolutions of honor, commissioning of police officers, salaries/salary supplements, deliberation of appointment, employment, re-employment of existing employees, evaluation, reassignment, duties, discipline, dismissal and/or replacement of any system employee including staff, faculty, Presidents and the Chancellor. (Where appropriate and permitted by law, Executive Sessions may be held for the above listed subjects.)

Contact: Lamar Urbanovsky, 333 Guadalupe, Tower III, Suite 810, Austin, Texas 78701, (512) 463-1808.

Filed: July 31, 1997, 3:34 p.m.

TRD-9709957



University Interscholastic League

Monday, August 4, 1997, 9:00 a.m.

Thompson Conference Center, 26th and Red River Streets

Austin

Waiver Review Board

AGENDA:

AA. Request for a waiver of the Parent Residence Rule by Kimberly Dorsett representing Hays High School in Buda, Texas.

BB. Request for waiver of the Four Year Rule by Stephen Taylor representing Hamshire-Fannett High School in Hamshire, Texas.

CC. Request for a waiver of the Four Year Rule by Richard Tankersley representing Irion County High School in Mertzon, Texas.

DD. Request for a waiver of the Four Year Rule by Glen Harrison representing Gregory-Portland High School in Portland, Texas.

Contact: Sam Harper, 23001 Lake Austin Boulevard, Austin, Texas 78713, (512) 471-5883.

Filed: July 31, 1997, 10:54 a.m.

TRD-9709917



The University of Houston

Monday, August 11, 1997, 8:00 a.m.

Conference room One, 1600 Smith, Suite 3400, UH System Offices

Austin

Board of Regents-Variou Committees

AGENDA:

Committee/Subcommittee Meetings

Asset Management

Facilities Planning/Physical Plant

Compensation/Human Resources

Administration/Finance

Risk Management

Executive

Contact: Peggy Cervenka, 1600 Smith, Suite 3400, Houston, Texas 77002, 1-713-754-7440.

Filed: August 4, 1997, 8:46 a.m.

TRD-9710055



The University of Texas System

Tuesday, August 5, 1997, 7:30 a.m.

Regents' Room, Ninth Floor, Ashbel Smith Hall, 201 West Seventh Street

Austin

Board of Regents

AGENDA:

The board will convene in Open Session for the sole purpose of recessing to Executive Session, in accordance with Texas Government Code, Chapter 551, §551.074, to interview the finalist candidates for the presidency of the University of Texas Medical Branch at Galveston. This meeting will be to interview and discuss the credentials of the finalist candidates and no formal action on the election of a president is planned until the regular meeting of the Board on August 13-14, 1997.

Contact: Arthur H. Dilly, 201 West Seventh Street, Austin, Texas 78701, (512) 499-4402.

Filed: July 30, 1997, 10:40 a.m.

TRD-9709883



Texas Veterans Commission

Friday, August 22, 1997

E.O. Thompson Building, Sixth Floor, 10th and Colorado Streets

Austin

Fourth Quarterly Meeting

AGENDA:

Regular meeting to approve the minutes of the third quarterly meeting, receive information concerning the 75th Legislative Session, and consider approval of salary increases for line-item exempt employees. The Commission will also discuss matters concerning veterans' benefits and services, receive staff reports and conduct other routine business of the Commission. The Commission will take action on these matters as it deems appropriate.

Contact: Douglas K. Brown, P.O. Box 12277, Austin, Texas 78711, (512) 463-5538.

Filed: August 1, 1997, 2:21 p.m.

TRD-9710022

Texas Workforce Commission

Friday, August 22, 1997, 9:00 a.m.

701 West 51st Street, Sixth Floor, West Tower

Austin

AGENDA:

Attend Department of Human Services Board Breakfast and Meeting.

Contact: Esther Hajdar, 101 East 15th Street, Austin, Texas 78778, (512) 463-7833.

Filed: July 31, 1997, 11:57 a.m.

TRD-9709930



Regional Meetings

Meetings filed July 30, 1997

Austin-Travis County MHMR Center, Executive Committee, met with emergency revised agenda at 1430 Collier Street, Board Room, Austin, July 31, 1997 at 4:00 p.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 440-4031. TRD-9709899.

Austin-Travis County MHMR Center, Board of Trustees, met with emergency revised agenda at 1430 Collier Street, Board Room, Austin, July 31, 1997 at 5:00 p.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 440-4031. TRD-9709900.

Houston-Galveston Area Council, Gulf Coast Workforce Development Board, met at 3555 Timmons Lane, Conference Room A, Second Floor, Houston, August 5, 1997, 10:00 a.m. Information may be obtained from Carol Kimmick, 3555 Timmons Lane, Suite 500, Houston, Texas 77027, (713) 627-3200. TRD-9709884.

Lee County Appraisal District, Board of Directors, will meet at 218 East Richmond Street, Giddings, August 13, 1997 at 9:00 a.m. Information may be obtained from Roy L. Holcomb, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618. TRD-9709890.

Tyler County Appraisal District, Board of Directors, will meet at 806 West Bluff, Woodville, August 12, 1997 at 10:00 a.m. Information may be obtained from Eddie Chalmers, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9709898.

Meetings filed July 31, 1997

Angelina and Neches River Authority, ANRA Board of Directors, met at 210 Lufkin Avenue, ANRA Board Room, Lufkin, August 5, 1997 at 9:30 a.m. Information may be obtained from Gary L. Neighbors, P.O. Box 387, Lufkin, Texas 75901, (409) 632-7795, fax: (409) 632-2564. TRD-9709935.

Aqua Water Supply Corporation, Board of Directors, met at 305 Eskew, Bastrop, August 4, 1997 at 7:30 p.m. Information may be obtained from Carol Ducloux, 305 Eskew, Bastrop, Texas 78604, (512) 303-3943. TRD-9709904.

Aqua Water Supply Corporation, Board of Directors, revised agenda, met at 305 Eskew, Bastrop, August 4, 1997 at 7:30 p.m. Information may be obtained from Carol Ducloux, 305 Eskew, Bastrop, Texas 78604, (512) 303-3943. TRD-9709954.

Brazos Valley Development Council, Regional Advisory Committee on Aging, met at 1706 East 29th Street, Bryan, August 5, 1997 at 2:30 p.m. Information may be obtained from Roberta Lindquist, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244. TRD-9709903.

Dawson County Central Appraisal District, Board of Directors, met at 1806 Lubbock Highway, Lamesa, August 6, 1997 at 7:00 a.m. Information may be obtained from Tom Anderson, P.O. Box 797, Lamesa, Texas 79331, (806) 872-7060. TRD-9709929.

East Texas Council of Governments, CEO Board of Directors, met at 1306 Houston Street, Kilgore, August 6, 1997 at 11:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9709934.

Edwards Aquifer Authority, Permits Committee, met at 1615 North St. Mary's Street, San Antonio, August 6, 1997 at 5:00 p.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Marys' Street, San Antonio, Texas 78212, (210) 222-2204. TRD-9709911.

Garza Central Appraisal District, Board of Directors, met at 124 East Main, Post, August 6, 1997 at 9:00 a.m. Information may be obtained from Billie Y. Windham, P.O. Drawer F, Post, Texas 79356, (806) 495-3518. TRD-9709907.

Gulf Bend Center, Mid-Coast Community Management, will meet at 1502 East Airline, Victoria, August 11, 1997 at 3:00 p.m. Information may be obtained from Janet Waters, 1502 East Airline, Victoria, Texas 77901, (512) 575-0611. TRD-9709956.

Hamilton County Appraisal District, Board, met at 119 East Henry, Hamilton, August 5, 1997 at 7:00 a.m. Information may be obtained from Doyle Roberts, 119 East Henry, Hamilton, Texas 76531, (254) 386-8945. TRD-9709910.

Upshur County Appraisal District, Board of Directors, met at Warren and Trinity Streets, Gilmer, August 5, 1997 at 1:00 p.m. Information may be obtained from Louise Stracener, P.O. Box 280, Gilmer, Texas 75644-0280, (903) 843-3041. TRD-9709959.

Meetings filed August 1, 1997

Barton Springs/Edwards Aquifer Conservation District, Board of Directors, Executive Session, met at 1124A Regal Row, Austin, August 7, 1997 at 4:00 p.m. Information may be obtained from Bill E. Couch, 1124A Regal Row, Austin, Texas 78748, (512) 282-8441, fax: (512) 282-7016. TRD-9710041.

Barton Springs/Edwards Aquifer Conservation District, Regular Meeting and Public Hearing, met at 1124A Regal Row, Austin, August 7, 1997 at 4:00 p.m. Information may be obtained from Bill E. Couch, 1124A Regal Row, Austin, Texas 78748, (512) 282-8441, fax: (512) 282-7016. TRD-9710042.

Dallas Area Rapid Transit, Planning Ad Hoc Committee, met in Conference Room C, First Floor, 1401 Pacific Avenue, Dallas, August 5, 1997 at 9:00 a.m. Information may be obtained from Paula Bailey, DART, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9710026.

Dallas Area Rapid Transit, President's Luncheon, met at Executive Conference Room A, Second Floor, 1401 Pacific Avenue, Dallas, August 5, 1997 at Noon. Information may be obtained from Paula Bailey, DART, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9710027.

Dallas Area Rapid Transit, FY1998 Financial Plan/Budget Workshop, met in Conference Room C, First Floor, 1401 Pacific Avenue, Dallas, August 8, 1997 at 10:00 a.m. Information may be obtained from Paula Bailey, DART, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9710028.

Deep East Texas Council of Governments, Board of Directors and Grants Application Review Committee, will meet at FM356, Westwood Shores Country Club, Trinity, at 11:00 a.m. Information may be obtained from Walter G. Diggles, 274 East Lamar Street, Jasper, Texas 75951, (409) 384-5704. TRD-9710056.

East Texas Council of Governments, Executive Committee, met at 1306 Houston Street, Kilgore, August 7, 1997, 12:30 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9709997.

Education Service Center, Region VI, Board, will meet at 1301 Sam Houston Avenue, Huntsville, August 14, 1997 at 4:00 p.m. Information may be obtained from Bobby Roberts, 3332 Montgomery Road, Huntsville, Texas, 77340, (409) 295-9161. TRD-9710001.

Erath County Appraisal District, Appraisal Review Board, will meet at 1390 Harbin Drive, Stephenville, August 19, 1997 at 9:00 a.m. Information may be obtained from Edna Vara, 1390 Harbin Drive, Stephenville, Texas 76401, (254) 965-5434. TRD-9709981.

Grayson Appraisal District, Board of Directors, met at 205 North Travis, Sherman, August 7, 1997 at Noon. Information may be obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, (903) 893-8673. TRD-9710000.

Heart of Texas Council of Governments, Local Workforce Development Board, met at 320 Franklin Avenue, Waco, August 7, 1997 at Noon. Information may be obtained from Donna Tomlinson, 320 Franklin Avenue, Waco, Texas 76701, (817) 756-7822. TRD-9709979.

Heart of Texas Housing Finance Corporation, Board, will meet at 300 Austin Avenue, Fourth Floor Conference Room, Waco, August

11, 1997 at 11:30 a.m. Information may be obtained from Lyndon Olson, 510 North Valley Mills Drive, Suite 600, Waco, Texas 76710, (817) 776-3336. TRD-9710044.

Middle Rio Grande Development Council, Board Finance Committee, met at Operations Conference Room, 209 North Getty, Uvalde, August 6, 1997 at 10:00 a.m. Information may be obtained from Leodoro Martinez, Jr., P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9710040.

Nolan County Central Appraisal District, Board of Directors, will meet at the Nolan County Courthouse, Third Floor, 100 East Third, Sweetwater, August 12, 1997 at 7:00 a.m. Information may be obtained from Patricia Davis, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421. TRD-9710021.

Northeast Texas Rural Rail Transportation District, Board, met at Alliance Bank, 100 Jefferson Street, Sulphur Springs, August 4, 1997 at 3:00 p.m. Information may be obtained from Sue Ann Harting, 2821 Washington Street, Greenville, Texas 75401, (903) 450-0140. TRD-9709963.

San Jacinto River Authority, Board of Directors, met at 2301 North Millbend Drive, The Woodlands, August 7, 1997 at 7:30 a.m. Information may be obtained from James R. Adams, P.O. Box 329, Conroe, Texas 77305, (409) 588-1111. TRD-9709972.

Shackelford Water Supply Corporation, Directors, met at Icehouse Restaurant, Albany, August 6, 1997 at Noon. Information may be obtained from Gaynell Perkins, Box 11, Albany, Texas 76430, (817) 345-6868 or (915) 762-2575. TRD-9709980.

Stephens County Rural Water Supply Corporation, Regular monthly meeting, met at 301 West Elm Street, Breckenridge, August 7, 1997 at 7:00 p.m. Information may be obtained from Mary Barton, P.O. Box 1621, Breckenridge, Texas 76424, (254)559-6180. TRD-9709995.

Meetings filed August 4, 1997

North Central Texas Council of Governments, Workforce Board Finance Committee, met at 616 Six Flags Drive, Suite 200, Arlington, August 7, 1997 at 9:30 a.m. Information may be obtained from Casandra J. Vines, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 695-9176. TRD-9710072.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC 501. Requests for federal consistency review were received for the following projects(s) during the period of July 29, 1997, through August 1, 1997:

FEDERAL AGENCY ACTIONS:

Applicant: King Ranch Oil and Gas, Inc.; Location: Matagorda Island Area, Block 522 N/2 SE/4, Gulf of Mexico, Offshore, Texas; Project No.: 97-0231-F1; Description of Proposed Action: The applicant proposes to construct a jack-up drilling rig and a three pile well protection structure in the anchorage area; Type of Application: U.S.C.O.E. permit application #20965(01) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Forest Oil Corporation; Location: East Breaks, Block 164, Lease OCS-G 17232, OCS Federal Offshore Waters, Gulf of Mexico; Project No.: 97-0233-F4; Type of Application: Initial Plan of Exploration, Title 30 CFR 250.33 (f) and (h).

Applicant: Tana Oil and Gas Corporation; Location: High Island, Blocks A-415 and A- 416, Leases OCS-G 15793 and 15794, OCS Federal Offshore Waters, Gulf of Mexico; Project No.: 97-0234-F4; Type of Application: Joint Development Operations Coordination Document, Title 30 CFR 250.34 (f) and (g).

Applicant: Ross Houston; Location: Treasure Island Subdivision, Block 4, Lot 10, Brazoria County, Texas; Project No.: 97-0235-F1; Description of Proposed Action: The applicant proposes to excavate

a shallow anchor trench seaward of the existing breakwater, to repair the breakwater structure. The trench and adjacent existing structure will be lined with a woven geotextile. A row of 3-foot by 18-inch gabions will be placed over the textile and filled with limestone rock 4 to 6 inches in diameter. The gabions will be covered with two rows of reno mattresses each 12 inches high. Approximately 2,400 square feet of land will be impacted. Type of Application: U.S.C.O.E. permit application under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action should be referred to the Coastal Coordination Council for review and whether the action is or is not consistent with the Texas Coastal Management Program goals and policies. All comments must be received within 30 days of publication of this notice and addressed to Ms. Janet Fatheree, Council Secretary, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495.

Issued in Austin, Texas, on August 1, 1997.

TRD-9710033

Garry Mauro

Chairman

Coastal Coordination Council

Filed: August 1, 1997

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Office of the Consumer Credit Commissioner

Notice of Rate Ceiling

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Title 79, Texas Civil Statutes, Article 1.04, as amended (Texas Civil Statutes, Article 5069-1.04).

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer (1)/Agricultural/ Commercial (2) thru \$250,000</u>	<u>Commercial(2) over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	08/04/97-08/10/97	18.00%	18.00%
Monthly Rate - Art. 1.04 (c)(3)	08/01/97-08/31/97	18.00%	18.00%

(1)Credit for personal, family or household use. (2)Credit for business, commercial, investment or other similar purpose. (3)For variable rate commercial transactions only.

Issued in Austin, Texas, on July 29, 1997.

TRD-9709906

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: July 31, 1997

Texas Education Agency

Request for Applications Concerning 1997-1999 Staff Development and Parent Training for Campus Deregulation and Restructuring to Improve Student Achievement Grant Program

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-97-020 from public school districts on behalf of individual school campuses. Each campus must have demonstrated a commitment to campus deregulation and to restructuring educational practices and conditions by entering into a partnership with representatives of all of the following entities: school staff; parents of students; community and business leaders; school district officers; a nonprofit, community-based organization that has a demonstrated capacity to train, develop, and organize parents and community leaders into a large, nonpartisan constituency that will hold the school and the school district accountable for achieving high academic standards; and TEA. A separate application, specific to the applying campus, must be submitted for each campus for which a district is applying.

Description. The purpose of this initiative is to assist eligible, individual public school campuses in: implementing practices and procedures consistent with deregulation and school restructuring to improve student achievement; and identifying and training parents and community leaders who will hold the school and the school district accountable for achieving high academic standards. Grants must be used to train and develop school staff, parents, and community and business leaders so they understand and implement the: academic

standards and practices necessary for high academic achievement; appropriate strategies to deregulate and restructure the school to improve student achievement; and effective strategies to organize parents and community leaders into a large, nonpartisan constituency that will hold the school and the school district accountable for achieving high academic standards. No more than 20% of the total grant funds may be used to implement the academic standards and practices necessary for high academic achievement. No more than 25% of the total grant funds may be used to implement strategies that are developed by partners and designed to enrich and extend student learning experiences outside of the regular school day. Grantees must demonstrate: the development and implementation of a comprehensive plan to engage in ongoing development and training of teachers, parents, and community leaders to understand academic standards, develop effective strategies to improve academic performance, and organize a large constituency of parents and community leaders to hold the school and school district accountable for achieving high academic standards; ongoing progress in achieving higher academic performance; and ongoing progress in identifying, training, and organizing parents and community leaders who will hold the school and the school district accountable for achieving high academic standards.

Dates of Project. The Staff Development and Parent Training for Campus Deregulation and Restructuring to Improve Student Achievement Grant Program will be implemented during the 1997-1999 school years. Applicants should plan for a starting date of no earlier than January 15, 1998, and an ending date of no later than August 31, 1999.

Project Amount. Projects will be eligible for up to \$25,000 initially, for 1997-1998 school year. It is anticipated that grants awarded under this RFA will be eligible for up to \$20,000 in additional funding for the 1998-1999 school year. Additional funding is contingent upon submitting a justification document to the TEA describing progress toward achieving the project objectives, the need for the additional funding, and how the additional funding will assist the campus in achieving the project objectives.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in this RFA. The TEA reserves the right to select from the highest ranking

applications campuses whose total percent of identified students from low-income families is 60% or higher or campuses whose total percent of students passing all tests taken on the Spring 1997 Texas Assessment of Academic Skills (TAAS) was below the state average. Campuses meeting the "low income" or TAAS criterion will be identified by consulting TEA printouts.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-97-020 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9304. Please refer to the RFA number in your request.

Further Information. For clarifying information about the RFA, contact Sandy Harwell, Texas Education Agency, (512) 463-8306 or slmcc@tenet.edu.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. (Central Time), Friday, September 26, 1997, to be considered.

Issued in Austin, Texas, on August 4, 1997.

TRD-9710054

Criss Cloudt

Associate Commissioner for Policy Planning and Research

Texas Education Agency

Filed: August 4, 1997



Texas Department of Health

Designation of Sites Serving Medically Underserved Populations - Houston, Texas (Harris County), Texas

The Texas Department of Health (department) is required under Texas Civil Statutes, Article 4495b, §3.06, to designate sites serving medically underserved populations. In addition, the department is required to publish notice of its designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has designated the following as sites serving medically underserved populations:

Scarborough Elementary School-Based Clinic, located at 3021 Little York, Houston, Texas (Harris County), Texas;

Sherman Elementary School-Based Clinic, located at 1909 McKee, Houston, Texas (Harris County), Texas;

Smiley High School-Based Clinic - Career & Technology Vocational Campus, located at 10726 Mesa Road, Houston, Texas (Harris County), Texas;

Texas Burrus Elementary School-Based Clinic, located at 701 East 33rd, Houston, Texas (Harris County), Texas;

Grimes Elementary School-Based Clinic, located at 9220 Jutland, Houston, Texas (Harris County), Texas; and

Jackson Middle School-Based Clinic, located at 5100 Polk, Houston, Texas (Harris County), Texas.

Designation is based on proven eligibility as a site serving a disproportionate number of clients eligible for federal, state or locally funded health care programs.

Oral and written comments on these designations may be directed to Demetria Montgomery, M.D., Chief, Bureau of Community Oriented Primary Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756; Telephone (512) 458-7771. Comments will be accepted for 30 days from the publication date of this notice in the *Texas Register*.

Issued in Austin, Texas, on August 1, 1997.

TRD-9709994

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: August 1, 1997



Designation of Sites Serving Medically Underserved Populations - The Federal Bureau Of Prisons -FCI - Beaumont (Jefferson County), Texas

The Department of Health is required under Texas Civil Statutes, Article 4495b, Sec. 3.06, to designate sites serving medically underserved populations. In addition, the department is required to publish notice of its designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has designated the following as a site serving medically underserved populations: The Federal Bureau Of Prisons -FCI- Beaumont - Low Facility Clinic located at Rt 4., Box 5000, Hebert Road, Beaumont, Jefferson County, Texas 77705. Designation is based on proven eligibility as a site serving a disproportionate number of clients eligible for federal, state or locally funded health care programs.

Oral and written comments on this designation may be directed to Demetria Montgomery, M.D., Chief, Bureau of Community Oriented Primary Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756; (512) 458-7771. Comments will be accepted for 30 days following the publication date in the *Texas Register*.

Issued in Austin, Texas, on August 4, 1997.

TRD-9710103

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: August 4, 1997



Designation of Sites Serving Medically Underserved Populations - The Federal Bureau Of Prisons -USP - Beaumont (Jefferson County), Texas

The Department of Health is required under Texas Civil Statutes, Article 4495b, Sec. 3.06, to designate sites serving medically underserved populations. In addition, the department is required to publish notice of its designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has designated the following as a site serving medically underserved populations: The Federal Bureau Of Prisons -USP - Beaumont - High Facility Clinic located at Rt 4., Box 5000, Hebert Road, Beaumont, Jefferson County, Texas 77705. Designation is based on proven eligibility as a site serving a disproportionate number of clients eligible for federal, state or locally funded health care programs.

Oral and written comments on this designation may be directed to Demetria Montgomery, M.D., Chief, Bureau of Community Oriented Primary Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756; (512) 458-7771. Comments will be accepted for 30 days following the publication date in the Texas Register.

Issued in Austin, Texas, on August 4, 1997.

TRD-9710102

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: August 4, 1997



Notice of Adoption of Chapter 35 Rules Concerning Pharmacy Services in the Texas Medicaid Vendor Drug Program

The purpose of this notice is to identify actions taken which affect the administrative rules published at 25 Texas Administrative Code, Chapter 35, concerning pharmacy services in the Texas Medicaid Vendor Drug Program. This notice is published in connection with adopted amendment to §35.601, new §35.611, and the repeal of §35.901 rules published in the August 8, 1997, issue of the adopted rules section of the *Texas Register*.

The Texas Department of Health (department) proposed rules, on behalf of the State Medicaid Director, which were published in the December 12, 1995, issue of the *Texas Register* (20 TexReg 10474). The proposal was to add a new §35.611, and also to repeal §35.901. The purpose of the proposal was to establish a new methodology for determining reimbursement to contracted vendors participating in the Texas Medicaid Vendor Drug Program, changing the reimbursement methodology from a cost based to a market based analysis.

The department submitted the adoption of the proposed rules to the State Medicaid Director and published the adopted rules in the February 9, 1996, issue of the *Texas Register* (21TexReg 957). The effective date of the rules was March 1, 1996.

A lawsuit challenging the validity of the rules was filed in state district court on February 27, 1996. The petition for a temporary restraining order was denied, but the court later entered a temporary injunction on March 13, 1996, prohibiting the department from implementing the rules pending a trial on the merits of the case.

The trial on the merits of the case occurred in March, 1997, and resulted in a court order, dated March 20th, 1997, which invalidated the rules. The effect of the court's ruling was to require that the rules that were in effect prior to March 1, 1996, remain in force until the rules are lawfully repealed and a new rule is lawfully adopted. The court stated in its order that the department remains free to promulgate a rate that lowers the reimbursement rates at issue and that nothing in the order would prevent the future repeal of §35.901 and adoption of a new rule, if done in compliance with the law.

The administrative rules which were published in the *Texas Register* and subsequently published in the Texas Administrative Code do not reflect the facts concerning litigation of the rules and do not reflect the fact that the state district court order invalidating the rules superseded the adoption of the rules by the Texas Board of Health.

Since the court order rendered the adopted rules completely void and nullified, as a matter of law, there exists no need to repeal any part of the Board's rule adoption.

The department proposed rules concerning the reimbursement rate methodology in the Texas Medicaid Vendor Drug Program, which were published in the June 10, 1997, issue of the *Texas Register* (22 TexReg 5640.) The proposal is to amend §35.601, add a new §35.611 and repeal §35.901. The purpose of the proposal is to clarify §35.601 by specifying the percentages that apply to the drug ingredient cost, to add a new §35.611 which established a dispensing fee reimbursement formula for pharmacy providers participating in the Medicaid Vendor Drug Program which is based on an estimated dispensing expense, the drug acquisition cost for generic and brand name drugs, and an inventory management factor and to establish a maximum dispensing fee. The proposal is to repeal §35.901, which is a cost based reimbursement methodology.

The Texas Board of Health adopted the proposal, with changes, on July 25, 1997. The proposal was filed with the *Texas Register* on July 29, 1997, and will be published in the August 8, 1997, issue of the *Texas Register*, TRD 9709811 and TRD 9709812.

Issued in Austin, Texas, on July 31, 1997.

TRD-9709931

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: July 31, 1997



Texas Health and Human Services Commission

Excluded Medicaid Providers

Information regarding excluded medicaid providers can now be found on the internet at www.hhsc.state.tx.us. Medicaid Providers who are engaged in Fraud or Abuse of the Medicaid program may be reported by writing to Sharon E. Thompson, P.O. Box 13247 Austin, Texas 78711 or by calling (512) 424-6519.

Issued in Austin, Texas, on August 1, 1997.

TRD-9709973

Marina Henderson

Executive Deputy Commissioner

Texas Health and Human Services Commission

Filed: August 1, 1997



Request for Offers

Notice of Request for Offers: The Texas Health and Human Services Commission (Commission) is the single agency designated to administer Medicaid in the State of Texas. As such, the Commission is pleased to announce the availability of funds for the development and implementation of a Medicaid Fraud and Abuse Detection System (MFADS).

The 74th Texas Legislature enacted Senate Bill 602 (Article 4413(502), §16A) which authorized the Commission to develop a system to coordinate and integrate state Medicaid databases to facilitate comprehensive analysis and detect fraud perpetrated by a program provider or client. The Commission has defined a new initiative to streamline and improve fraud and abuse detection and prevention in the Texas Medicaid program. This initiative will be supported by the MFADS. The 75th Texas Legislature enacted Senate Bill 30 which creates the Office of Investigations and Enforcement (OIE) and funds the MFADS.

A contract will be awarded on a competitive basis to a successful vendor which can demonstrate the greatest aptitude for effectively providing the requested services to OIE in response to the MFADS Request for Offers (RFO).

Electronic Access to the MFADS RFO: The Commission is making the MFADS RFO available through its web site: <http://www.hhsc.state.tx.us/>

Closing Date: Offers must be received in the Commission prior to 3:00 p.m. Central Standard Time on October 8, 1997. Offers received after this time and date will not be considered.

Application Deadline: Offers submitted must comply with the requirements set forth in the MFADS RFO. Submissions must be mailed (not faxed) to: Diane C. Davis, Project Manager, Texas Health and Human Services Commission, P.O. Box 13247, Austin, Texas 78711-3247, or hand-delivered to Ms. Davis at the Texas Health and Human Services Commission, Brown-Heatly Building, 4900 North Lamar Boulevard, Room 4144, Austin, Texas 78751. A copy of the MFADS RFO will be sent upon written request to Diane Davis at the mailing address previously listed.

Issued in Austin, Texas, on August 1, 1997.

TRD-9710005

Marina Henderson

Executive Deputy Commissioner

Texas Health and Human Services Commission

Filed: August 1, 1997

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Texas Department of Insurance

Notice Of Public Hearing

The Commissioner of Insurance, at a public hearing under Docket Number 2300 scheduled for September 16, 1997 at 9:00 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a staff petition. Staff's petition (captioned "Second Petition...") seeks amendment of the Texas Automobile Rules and Rating Manual (the Manual), to adopt new and/or adjusted 1995-98 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Ref. Number A-0797-21-I) was filed on July 29, 1997.

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the listed 1995-98 model vehicles.

A copy of the petition containing the full text of the proposed amendments to the Manual is available for review in the office of the

Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 463-6326; refer to (Ref. Number A-0797-21-I).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the Texas Register, to the Office of the Chief Clerk, Texas

Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to David Durden, Deputy Commissioner, Property and Casualty Insurance Lines, Texas Department of Insurance, P. O. Box 149104, MC 104-5A, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

Issued in Austin, Texas, on July 31, 1997.

TRD-9709919

Bernice Ross

Deputy Chief Clerk

Texas Department of Insurance

Filed: July 31, 1997

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The Commissioner of Insurance will hold an open meeting on Thursday August 28, 1997 at 9:00 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas to consider the oral comments from the parties on the proposal for decision in Docket Number 454-96-1639.G to establish benchmark rates for private passenger and commercial automobile insurance pursuant to Arts. 5.101 and 1.33B(c), Texas Insurance Code and to consider such other matters as may properly be brought before the Commissioner.

Issued in Austin, Texas, on July 31, 1997.

TRD-9709921

Bernice Ross

Deputy Chief Clerk

Texas Department of Insurance

Filed: July 31, 1997

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The Commissioner of Insurance will hold an open meeting on Thursday August 28, 1997 at 9:00 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas to consider oral comments from the parties on the proposal for decision in Docket Number 454-96-1640.G to establish benchmark rates for private passenger and commercial automobile insurance provided through the Texas Automobile Insurance Plan Association (TAIPA) pursuant to Arts. 5.101, 21.81 and 1.33B(c), Texas Insurance Code and to consider such other matters as may properly be brought before the Commissioner.

Issued in Austin, Texas, on July 31, 1997.

TRD-9709920

Bernice Ross

Deputy Chief Clerk

Texas Department of Insurance

Filed: July 31, 1997

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The Commissioner of Insurance will hold a public hearing Thursday, August 28, 1997 at 9:00 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas to consider the following items:

Docket Number 2295: Consideration of proposed amendments to (1) the Texas Automobile Rules and Rating Manual, Rule 14, amending the plan for installments for premium payments for the Personal Auto Policy, and (2) the Texas Standard Provisions for Automobile Insurance Policies, Personal Auto Policy, Special Instructions in regard to installment payments. A hearing on this matter was held July 8, 1997. The hearing was recessed, to be reconvened at a later date. This action is taken pursuant to Articles 5.06, 5.10, 5.96, 5.98, and 5.101 of the Insurance Code. Notice of the original hearing was published in the May 2, 1997 Texas Register (22 TexReg 3929).

Docket Number 2296: Consideration of proposed amendments to the Texas Automobile Rules and Rating Manual to change the premium charge for the attachment of appropriate Financial Responsibility Certification endorsements and to re-word endorsements 571 and TE 99 82A. A hearing on this matter was held July 24, 1997. The hearing was recessed, to be reconvened at a later date. The Commissioner is considering whether to amend the current rule to a flat fee, with a level of \$50 as proposed by staff, or whether some other amount less than \$50 would be more appropriate, based on actual expenses to the companies relating to the SR-22. This action is taken pursuant to Articles 5.06, 5.10, 5.96, 5.98, and 5.101 of the Insurance Code. Notice of the original hearing was published in the June 20, 1997 Texas Register (22 TexReg 5929).

Issued in Austin, Texas, on July 31, 1997.

TRD-9709922
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: July 31, 1997

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Commission on Jail Standards

Consultant Proposal Request

Pursuant to the Texas Civil Statutes, Article 6252-11C, the Commission on Jail Standards invites proposals for consulting services from qualified individuals to advise and assist TCJS in a survey of jails across the state under the terms of the Juvenile Justice and Delinquency Prevention Act, Public Law 93-415, as amended.

The individual selected will conduct on-site analyses of records and facilities at approximately 60 county and municipal jails and prepare required documentation and reports to verify compliance information regarding the removal of juveniles from the facilities. The selected consultant shall report directly to Bradley Linscomb at the Texas Commission on Jail Standards.

All work performed under this contract shall be reimbursed on an hourly basis and is expected to be completed by March 2, 1998.

Travel expenses shall be reimbursed based upon state per diem rates with direct operating expenses provided by TCJS.

Detailed specifications are contained in the Consultant Proposal Request available August 18, 1997 from the Texas Commission on Jail Standards, 300 West 15th Street, Suite 503, Austin, Texas between the hours of 8:30 a.m. and 4:30 p.m., Monday-Friday. For detailed information, contact Bradley Linscomb at (512) 463-5505.

Responses will be accepted only if actually received in writing in the Texas Commission on Jail Standards office no later than September 12, 1997 no later than 5:00 p.m., Central Daylight Time on this date. The Texas Commission on Jail Standards reserves the right to reject any or all proposals.

All proposals submitted by the deadline will be reviewed by the executive director. The executive director may request interviews with the top rated proposers. Based on proposers response, availability, experience, qualifications and demonstrated ability to work independently, the executive director will select the individual most qualified to provide services.

Issued in Austin, Texas, on August 1, 1997.

TRD-9710023
Jack E. Crump
Executive Director
Commission on Jail Standards
Filed: August 1, 1997

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Texas Natural Resource Conservation Commission

Enforcement Orders

An agreed order was entered regarding the CITY OF NATALIA, Docket No. 97-0131-MWD-E (Permit No. 11806-001) on July 18, 1997 assessing \$1,200 in administrative penalties with \$240. deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, TNRCC Enforcement Coordinator at (512)239-4495, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KLEBERG COUNTY, Docket No. 96-1855-MWD-E (Permit No. 13374-001) on July 18, 1997 assessing \$12,320 in administrative penalties with \$3,696 deferred.

Information concerning any aspect of this order may be obtained by contacting Cecily Small, TNRCC Staff Attorney at (512)239-0471 or Mary Smith, TNRCC Enforcement Coordinator at (512)239-4484, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JULIO TISCARENO DBA BUENA VISTA DAIRY, Docket No. 96-1823-AGR-E (No TNRCC Permit) on July 18, 1997 assessing \$16,130 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Guy Henry, TNRCC Staff Attorney at (512)239-6259 or Claudia A Chaffin, TNRCC Enforcement Coordinator at (512)239-4717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding CAROL MORRISON, Docket No. 96-1441-AGR-E (No TNRCC Permit) on July 18, 1997 assessing \$9,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Booker Harrison, TNRCC Staff Attorney at (512)239-4113 or Claudia Chaffin, TNRCC Enforcement Coordinator at (512)239-4717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BUSHLAND INDEPENDENT SCHOOL DISTRICT, Docket No. 96-1099-PWS-E (PWS No. 1880045) on July 18, 1997 assessing \$930. in administrative penalties with \$279. deferred.

Information concerning any aspect of this order may be obtained by contacting Katharine Wheatley, TNRCC Enforcement Coordinator at (512)239-4466, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GARY GRAY DBA HIGHLAND SHORES RV PARK, Docket No. 96-1948-PWS-E (PWS No. 2500053) on July 18, 1997.

Information concerning any aspect of this order may be obtained by contacting Terry Thompson, TNRCC Enforcement Coordinator at (512)239-6095, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BEN WHEELER WATER SUPPLY CORPORATION, Docket No. 96-1891-PWS-E (PWS No. 2340006) on July 18, 1997 assessing \$1,410 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tom Napier, TNRCC Enforcement Coordinator at (512)239-6063, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GERALD HEIM DBA HEIM WATER SYSTEM, Docket No. 96-0779-PWS-E (PWS No. 2500026, CCN No. 12227) on July 18, 1997 assessing \$930. in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Booker Harrison, TNRCC Staff Attorney at (512)239-4113 or Katharine Wheatley, TNRCC Enforcement Coordinator at (512)239-4757, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CHARLES TUCKER DBA CHUCK'S CAJUN KITCHEN, Docket No. 97-0208-PWS-E (PWS No. 1012928) on July 18, 1997 assessing \$980. in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cecily Small, TNRCC Staff Attorney at (512)239-2940 or Katharine Wheatley, TNRCC Enforcement Coordinator at (512)239-4757, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding MARSHA WATER SUPPLY CORPORATION, Docket No. 96-0768-PWS-E (PWS No. 2270040, CCN No. 12166) on July 18, 1997 assessing \$930. in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cecily Small, TNRCC Staff Attorney at (512)239-2940 or Katharine Wheatley, TNRCC Enforcement Coordinator at (512)239-4757, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding KATHY WILLIAMS DBA KID'S COUNTRY CHILD CARE, Docket No. 96-0564-PWS-E (PWS No. 1011706) on July 18, 1997 assessing \$930. in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary R Risner, TNRCC Staff Attorney at (512)239-6224 or Katharine Wheatley, TNRCC Enforcement Coordinator at (512)239-4757, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NEWELL OIL COMPANY, INCORPORATED, Docket No. 97-0363-PST-E (Facility No. 24636, Enforcement ID No. E11211) on July 18, 1997 assessing \$600. in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Raymond C Winter, TNRCC Staff Attorney at (512)239-0600 or Mick Wilson, TNRCC Enforcement Coordinator at (512)239-2228, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding M-CO AUTO PARTS, Docket No. 96-0971-PST-E (Facility No. 32501, Enforcement ID No. E11564) on July 18, 1997 assessing \$7,800 in administrative penalties with \$2,340 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond C Winter, TNRCC Staff Attorney at (512)239-0600 or Mick Wilson, TNRCC Enforcement Coordinator at (512)239-2228, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ROGER EVLER, Docket No. 96-0638-PST-E (Facility No. 0043523, Enforcement ID No. E11246) on July 18, 1997 assessing \$4,400 in administrative penalties with \$1,320 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Winter, TNRCC Staff Attorney at (512)239-0477 or Sushil Modak, TNRCC Enforcement Coordinator at (512)239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PRICE CONSTRUCTION, INCORPORATED, Docket No. 96-1036-PST-E (Facility No. 43098, Enforcement ID No. 5034) on July 18, 1997 assessing \$6,900 in administrative penalties with \$2,070 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Winter, TNRCC Staff Attorney at (512)239-0477 or Craig Carson, TNRCC Enforcement Coordinator at (512)239-2175, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding P & M ASSOCIATES, Docket No. 96-1840-PST-E (Facility No. 12490, Enforcement ID No. 4319) on July 18, 1997 assessing \$1,800 in administrative penalties with \$540. deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Winter, TNRCC Staff Attorney at (512)239-0477 or Craig Carson, TNRCC Enforcement Coordinator at (512)239-2175, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TEXAS GROCERIES, INCORPORATED, Docket No. 96-1341-PST-E (Facility No. 37056, Enforcement ID No. E11112) on July 18, 1997 assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Patricia Welton, TNRCC Staff Attorney at (512)239-0682 or Adele Noel, TNRCC Enforcement Coordinator at (512)239-1045, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MR. ALFREDO MORENO DBA MORENO'S TEXACO, Docket No. 96-0648-PST-E (Facility No. 18293, Enforcement ID No. E11531) on July 18, 1997 assessing \$5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy L. Harrison, TNRCC Staff Attorney at (512)239-1736 or Connie Wong, TNRCC Enforcement Coordinator at (512)239-2567, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GATEWAY TRUCK STOP, Docket No. 96-0315-PST-E (Facility No. 11872, Enforcement ID No. E11448) on July 18, 1997 assessing \$1,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Hodgson Eckel, TNRCC Staff Attorney at (512)239-2195 or Connie Wong, TNRCC Enforcement Coordinator at (512)239-2567, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GULSHAN, INCORPORATED, Docket No. 96-0475-PST-E (Facility No. 24890, Enforcement ID Nos. E11515 & E11238) on July 18, 1997 assessing \$11,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Walter Ehresman, TNRCC Staff Attorney at (512)239-0573 or Connie Wong, TNRCC Enforcement Coordinator at (512)239-2567, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EGP FUELS COMPANY, Docket No. 96-0513-IHW-E (SWR No. 30282, EPA ID No. TXD008084238) on July 18, 1997 assessing \$9,600 in administrative penalties with \$2,880 deferred.

Information concerning any aspect of this order may be obtained by contacting Anne Rhyne, TNRCC Enforcement Coordinator at (512)239-1291, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

Issued in Austin, Texas, on August 1, 1997.

TRD-9710049

Eugenia K. Brumm, Ph.D.

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: August 1, 1997

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Notice of Amendment of a Consulting Services Contract

The Texas Natural Resource Conservation Commission (TNRCC) furnishes this notice of an amendment of a consulting services contract which was awarded for Aquatic Resource Impairment of Resacas by Nonpoint Source Pollution from Urban Runoff in the Brownsville, Texas Area.

The notice for request for proposals was published in the July 9, 1993, issue of the *Texas Register*.

Description of Services. The contractor will conduct a research project which will study water quality impairment of resacas (oxbow lakes) due to nonpoint source pollution in the Brownsville area. The Texas Natural Resource Conservation Commission has identified the following as the overall objectives of the pilot project: to identify and characterize nonpoint source pollution in runoff from specific areas; to design and implement a field assessment (sampling) which determines the beneficial use support status of the area's resacas and identifies the cause and source of any use impairments identified; and to provide information necessary to make a supporting/nonsupporting beneficial use determination for the resacas and identify possible impairments due to nonpoint source pollution.

Effective Date and Value of Contract. This amendment is adding Seven Thousand Dollars (\$7,000) and is changing the termination date from August 31, 1997 to a new termination date of August 31, 1998. The amendment will make the contract effective from September 1, 1994 until August 31, 1998. The total cost of the contract is \$207,000.00.

Name of the Contractor. The contract has been awarded to Ambiotec Environmental Consultants at P.O. Box 2565, Harlingen, Texas 78551.

Persons who have questions concerning this award may contact Charles Dvorsky, Manager (MC150), Data Collection Section, Water Quality Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-4411.

Issued in Austin, Texas, on August 4, 1997.

TRD-9710053

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: August 4, 1997

◆ ◆ ◆
Notice Of Application For Municipal Solid Waste Management Facility Permit

For The Week Ending August 1, 1997

CITY OF ELDORADO has applied for a permit (Proposed Permit No. MSW2264) to authorize a Type I-AE municipal solid waste facility. The permittee will be authorized to dispose of municipal solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities; municipal solid waste resulting from construction or demolition projects; Class 2 and Class 3 industrial solid waste; and special wastes that are properly identified. Solid waste may be accepted at a rate not to exceed the amount of 20 tons per day based on an annual average. The permit would allow the operating hours of this municipal solid waste

facility to be any time between the hours of 7:00 a.m. to 7:00 p.m. Monday through Saturday. The facility may operate within these approved hours at the discretion of the site management. The site will cover approximately 75.465 acres of land and is to receive approximately 18.5 tons of solid waste per day. The municipal solid waste facility will be located approximately 5 miles west of the City of Eldorado, 1.2 miles north of U.S. Highway 190 on County Road 404 in Schleicher County, Texas.

If you wish to request a public hearing, you must submit your request in writing. You must state (1) your name, mailing address and daytime phone number; (2) the application number, TNRCC docket number or other recognizable reference to the application; (3) the statement I/we request an evidentiary public hearing; (4) a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; and (5) a description of the location of your property relative to the applicant's operations.

Requests for a public hearing or questions concerning procedures should be submitted in writing to the Chief Clerk's Office, Park 35 TNRCC Complex, Building F, Room 1101, Texas Natural Resource Conservation Commission, Mail Code 105, P.O. Box 13087, Austin, Texas 78711. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

Issued in Austin, Texas, on August 1, 1997.

TRD-9710050

Eugenia K. Brumm, Ph.D.

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: August 1, 1997



Provisionally-Issued Temporary Permits to Appropriate State Water

Listed below are permits issued during the period of August 1, 1997.

Application No. TA-7842 by Bryan Construction Company for diversion of 4 acre-feet in a 1-year period for industrial (hydrostatic testing) purposes. Water may be diverted from Plum Creek, approximately 2.5 miles east of Lockhart, Caldwell County, Texas near the intersection of Plum Creek and FM-20, Guadalupe River Basin.

Application No. TA-7844 by Redtown Farm for diversion of 10 acre-feet in a 6-month period for irrigation use. Water may be diverted from the Trinity River, approximately 17 miles southwest of Palestine, Anderson County, Texas, Trinity River Basin.

Application No. TA-7847 by Gilbert Texas Construction for diversion of 6.0 acre-feet during a 12 month period for industrial purposes. Water may be diverted from the Sabine River, Sabine River Basin, at the Interstate Highway 20 crossing, approximately 2 miles west of Longview, Gregg County, Texas, Sabin River Basin.

The Executive Director of the TNRCC has reviewed each application for the permits listed and determined that sufficient water is available at the proposed point of diversion to satisfy the requirements of the application as well as all existing water rights. Any person or persons

who own water rights or who are lawful users of water on a stream affected by the temporary permits listed above and who believe that the diversion of water under the temporary permit will impair their rights may file a complaint with the TNRCC. The complaint can be filed at any point after the application has been filed with the TNRCC and the time the permit expires. The Executive Director shall make an immediate investigation to determine whether there is a reasonable basis for such a complaint. If a preliminary investigation determines that diversion under the temporary permit will cause injury to the complainant the commission shall notify the holder that the permit shall be canceled without notice and hearing. No further diversions may be made pending a full hearing as provided in Section 295.174. Complaints should be addressed to Water Rights Permitting Section, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, Telephone (512) 239-4433. Information concerning these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, Telephone (512) 239-3300.

Issued in Austin, Texas, on August 1, 1997.

TRD-9710048

Eugenia K. Brumm, Ph.D.

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: August 1, 1997



Public Notices

Request for Nominations to Appoint Nine Individuals to the Waste Reduction Advisory Committee 152

The Texas Natural Resource Conservation Commission (TNRCC) is soliciting nominations to fill nine (9) of the thirteen (13) memberships of the Waste Reduction Advisory Committee which expire on August 31, 1997. Five (5) of the expiring terms are official members and four (4) are ex officio. TNRCC Commissioners, at an Agenda, will appoint nine (9) advisory committee members to new terms which will expire on August 31, 2001.

The Waste Reduction Advisory Committee (WRAC) was established by the 71st Texas Legislature in 1989 under Section 361.0215 of the Texas Health and Safety Code to advise the Commission on matters dealing with pollution prevention and waste reduction programs. The WRAC has been instrumental in creating a nationally recognized state pollution prevention program, including the development and monitoring of the Waste Reduction Policy Act of 1991, and voluntary environmental programs such as CLEAN TEXAS 2000. The WRAC helped establish the Governor's Awards for Environmental Excellence, and is working to promote regulatory integration of pollution prevention into existing and future regulatory programs.

The WRAC is composed of nine official members who offer a balanced representation of environmental and public interest groups and the regulated community. Two statewide ex officio positions were established by the Commission in 1992 and two local government ex officio positions were established by the Commission in 1995 to provide additional participation from local and regional government and state legislators.

The WRAC advises the commission on various activities including: the appropriate organization of state agencies and the financial and technical resources required to aid the state in its efforts to

promote waste reduction and minimization; the development of public awareness programs on household hazardous waste programs; and the provision of technical assistance to local governments for development of waste management strategies. The WRAC also reviews and evaluates pollution prevention programs to assist in effective implementation of the state's waste management hierarchy.

The WRAC operates under the requirements of the Texas Administrative Code, Title 30, Part I, Chapter 5, entitled Advisory Committees. The WRAC meets a minimum of four times per year and as needed. Members may not miss three consecutive regularly scheduled meetings or more than half of all the regularly scheduled meetings in a one-year period. The meetings usually last one full day and are held at the TNRCC in Austin, Texas. Members are not reimbursed for expenses incurred to attend meetings and do not receive financial compensation. The WRAC must report in writing to the TNRCC Commission a minimum of once per year, unless otherwise directed.

The TNRCC Commissioners invite nominations for the following nine (9) positions. Each nomination should include a biographical summary which includes the individual's experience and qualifications and an agreement to serve on the committee.

Please submit nomination(s) for the following vacancies to maintain a balanced representation on the WRAC:

One (1) representatives from an environmental or public interest group;

Three (3) representatives from the regulated community;

One (1) representative from the academic community;

A local government representative;

A regional government representative;

A State Senator; and

A State Representative.

Written nominations must be received in the TNRCC Office of Pollution Prevention and Recycling by 5:00 p.m. on August 29, 1997. Nominations should be directed to: Ken Zarker, Manager, Strategic Partnerships Program, Office of Pollution Prevention and Recycling (MC 112), TNRCC, P.O. Box 13087, Austin, Texas 78711-3087, E-mail to kazarker@tnrcc.state.tx.us or fax to (512) 239-3165. Questions regarding the Waste Reduction Advisory Committee can be directed to Mr. Zarker at (512) 239-3145.

Issued in Austin, Texas, on August 4, 1997.

TRD-9710070

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: August 4, 1997



The executive director of the Texas Natural Resource Conservation Commission (TNRCC) by this notice is issuing a public notice of intention to delete (delist) a facility from the State Registry (State Superfund Registry) of sites which may constitute an imminent and substantial endangerment due to a release or threatened release of hazardous substances into the environment.

The site proposed for delisting is the Waste Oil Tank Service State Superfund site which was originally placed on the State Superfund

Registry list on January 22, 1988 (13 TexReg 427-428). The site is located on a one-half acre lot in north-central Houston near the intersection of Aldine Westfield Road and Hartwick Road (2010 Hartwick Road). The site has been cleared and currently is vacant and enclosed by a chain-link fence with a locked gate. The fence and gate have been inspected and maintained on a monthly basis.

In 1975, the site was developed to operate as a waste oil collection and transfer facility and stored waste oil collected from various sources in the greater Houston area. The primary source of waste oil was gasoline retail stations; however, waste oil was also reportedly collected from nearly every significant waste oil generator in the Houston area. In addition, paint thinner, transformer oil, lubricating oil, diesel fuel, compressor oil, crude-slop, mineral spirits, methyl ethyl ketone, trichloroethylene, xylene, naptha, spent acid solution, antifreeze, hydraulic oil, solvents with organic residues, and miscellaneous chemicals were handled at the site. Activities at the site decreased in magnitude between 1984 and 1991, and ceased in 1991.

A waste characterization study was completed during July and August, 1995 to characterize the nature and volume of wastes present at the site. Subsequent to the completion of the waste characterization study, a waste removal action was performed during October and November, 1995. A total of 58,476 gallons of oily water, oily water/sludge, rainwater, and oil and water were removed from the site and either injected into a permitted deep well, properly disposed of at a permitted landfill, or treated. A total of 748 cubic yards of soil, oily sludge and water, concrete and debris were also removed and properly disposed of at a permitted landfill. A total of 65 55-gallon drums were cleaned, crushed, and combined with the on-site debris and disposed of at a permitted landfill. A previously-unreported 2,000 gallon underground storage tank was removed and cleaned and transported to a recycling center along with 67 used automobile tires.

A remedial investigation work plan was developed and submitted to the TNRCC for review. The purpose of the remedial investigation was to characterize the current condition of the surface soils, subsurface soils, surface water, and groundwater at the site. The scope of work included the collection and analysis of surface and subsurface soils, the installation of groundwater monitoring wells and the collection and analysis of surface water samples from the ditch located directly in front of the site. The remedial investigation work plan was approved by the TNRCC on April 25, 1996.

The remedial investigation was completed and a report dated August 7, 1996, was submitted to the TNRCC for review. Based on an evaluation of all identified media of concern at the site, lead in surface soil and benzene, iron and manganese in groundwater were identified as requiring further evaluation at the site. To further evaluate groundwater, a quarterly groundwater sampling and monitoring program was initiated. The remedial investigation report was approved by the TNRCC on September 30, 1996. Site risks were evaluated through the preparation of a human health risk assessment which used facts and assumptions to estimate potential adverse effects on human health from exposure to the existing contamination at the site. A draft risk assessment dated December 2, 1996 was prepared and submitted to the TNRCC for review. The draft risk assessment concluded that there were three areas at the site that had concentrations of polynuclear aromatic hydrocarbons (PAHs) above background concentrations in the surface soils. Therefore, on March 10, 1997, a supplemental removal action was conducted in an attempt to remove the surface soils down to background levels in the

aforementioned three areas of concern. A total of 30 cubic yards of soil was removed and transported off-site for disposal at a permitted landfill.

Subsequent to the completion of a supplemental removal action report, the human health risk assessment was revised to incorporate current site conditions. The constituent database for surface soils was revised by substituting the results associated with the soil removed during the supplemental removal action with the confirmatory samples. The confirmatory test results indicated that there are surface soils with concentrations slightly above background concentrations but well below residential cleanup standards. The final human health risk assessment dated June 3, 1997, was submitted to the TNRCC for review. The final human health risk assessment concluded the evaluation of potential future exposure of on-site residents or workers to surface soils, subsurface soils, and groundwater indicates the site no longer poses an unacceptable risk to human health and therefore no further action is warranted. The site specific analytical data for the site supports the conclusion that this site is usable for residential development without any further remedial action. A deed recordation will be placed on the site in order to document the levels of constituents which are slightly above background concentrations.

The executive director has determined that this site does not present an imminent and substantial endangerment to public health and safety or the environment and is therefore eligible for deletion from the list of sites proposed for the State Superfund Registry in accordance with 30 Texas Administrative Code (TAC), §335.344(c).

In accordance with 30 TAC §335.344(b), the TNRCC shall hold a public meeting to receive comment. This meeting is not considered a contested case hearing within the meaning of Texas Government Code, Chapter 2001. This meeting shall be held upon initiation by the executive director or by requests filed with the executive director before 5:00 p.m. Monday, September 8, 1997. At least 30 days prior to the date set for the meeting, notice shall be provided by first class mail to all PRPs and other interested persons, and by publication in a newspaper of general circulation in the county where the facility is located. The person submitting the request shall bear the cost of the publication of the notice.

The Waste Oil Tank Service State Superfund site will be delisted from the State Superfund Registry if a public meeting challenging this determination by the executive director is not requested by any interested person(s) before the designated date.

All inquiries regarding the Waste Oil Tank Service State Superfund site should be directed to Michael A. Bame, C.P.G. at (800) 633-9363 (within Texas only) or (512) 239-5658. A portion of the records for this site, including documents and testing results pertinent to the executive director's determination, are available for inspection and copying at the Kashmere Gardens Branch of the Houston Public Library, 5411 Pardee, Houston, Texas, telephone (713) 674-8461. Kashmere Branch Library operating hours are: Monday, Noon to 9:00 p.m.; Tuesday, 10:00 a.m. to 9:00 p.m.; Wednesday, 10:00 a.m. to 6:00 p.m.; Thursday, Noon to 9:00 p.m.; Friday, 10:00 a.m. to 6:00 p.m. and Saturday, 10:00 a.m. to 6:00 p.m. Copies of the complete public file may be obtained during regular business hours at the TNRCC, Central Records, Building D, North Entrance, Room 190, 12100 Park 35 Circle, Austin, Texas 78753, telephone (800) 633-9363 or (512) 239-2920. Copying of file information is subject to payment of a fee.

Issued in Austin, Texas, on August 4, 1997.

TRD-9710071
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Filed: August 4, 1997

Permian Basin Regional Planning Commission

Request for Proposal

I. INTRODUCTION

GENERAL INFORMATION

The Permian Basin Regional Planning Commission (PBRPC) is requesting proposals from qualified firms of certified public accountants to audit financial statements for the fiscal year ending September 30, 1997. This audit is to be performed in accordance with generally accepted auditing standards; the standards set forth for financial audits in the U.S. General Accounting Office's (GAO) Government Auditing Standards (1984); the provisions of the federal Single Audit Act of 1984, as amended; U.S. Office of a Management and Budget (OMB) Circular A-128, Audits of State and Local Governments, until rescinded, or circular A-133, Audits of Institutions of Higher Education and Non-profit Institutions, as revised to cover state and local governments, or any additional requirements.

Each proposal received will become a part of PBRPC's official files without obligation on the part of PBRPC. The requested proposal is to include three annual audits covering 12-month fiscal years beginning October 1, 1997. The reports required include statements as directed by each grant agency and/or as required to meet the Single Audit Act and OMB Circular Number A-128.

Pertinent criteria, background, deadlines and the format requirements are contained in the following information.

II. BACKGROUND

The audit must comply with Generally Accepted Auditing Standards, as stated in AICPA Statements on Auditing Standards, the provision of the Single Audit Act, the generally accepted government auditing standards issued by the GAO and OMB Circular No. A-128 or A-133.

DATES OF INTEREST FOR THE RFP:

The periods to be audited are fiscal years ended September 30, 1997, 1998 & 1999 for the Permian Basin Regional Planning Commission. Proposals must be received in the office of the PBRPC no later than 5:00 p.m., Central Daylight time, on September 1, 1997.

III. SCOPE OF AUDIT

The auditor will be responsible for the completion of the following tasks:

1. Selection of audit samples of grants to be audited.
2. Comprehensive financial audit of all grants are required by law. (Attachment A).
3. Statement and schedule will be prepared by the auditor with the assistance of staff as necessary.

4. The Finance Department staff and responsible Management Personnel will be available during the audit to assist the firm by providing information, documentation and explanations.

5. All records are maintained by the PBRPC, and will be audited at the office of the PBRPC.

Proposals should be addressed to: Ernie Crawford, Executive Director, Permian Basin Regional Planning Commission, P.O. Box 60660, Midland, Texas 79711-0660.

In addition, the envelope should be marked, "Sealed Proposal for Auditing Services" in the lower left-hand corner.

Based upon the information provided in Section II, the proposals should state a minimum fee that will be charged for each level of staff if the PBRPC authorizes the firm to expand the scope of engagement.

Proposals should also provide for the printing, typing and delivery of 50 copies of the completed audit report no later than ninety (90) days after the end of the fiscal year audited. Each proposal should have a maximum charge for each fiscal year audited. PBRPC reserves the right to reject any and all proposals submitted and to request additional information from all proposers. All entities submitting proposals will be notified no later than September 15, 1997 of the audit firm to which the contract has been awarded.

Questions concerning this request for proposals should be forwarded to: Helen Grady, 915/563-1061.

IV. CRITERIA:

Criteria for the selection of the auditor are established as follows:

1. Information of the firm's background and experience auditing; programs financed by the federal government; state, county and local government activities; nonprofit organizations; and commercial entities.
2. Proposals should contain resumes of team members to be assigned to this project by the auditor. These resumes should further specify the role to be played by each member during the conduct of the audit. Emphasis should be placed on prior audit experience relative to state and federal grants or subcontractors. A description of the partner(s) and manager(s) to be assigned to the engagement, including their resumes. Failure of the firm to assign individuals included in the team description. may be cause for termination of the contract.
3. Information as to the size and organizational structure of the firm.
4. The firm's ability to provide 50 copies of the auditor's report, the financial statements and schedules, the management letter, and the report on internal accounting control weaknesses. The partner in charge of the audit shall be free to attend up to three public meetings a year as directed by the PBRPC at which the audit report will be discussed.
5. The firm shall make available its working papers to any or all grantors to the PBRPC upon request, and in accordance with federal and state grant provisions.
6. Ability of the firm to contain the cost of the audit.
7. Ability of the firm to meet the ninety (90) day deadline.

ATTACHMENT A

Grants to be audited FY 97

Grant or Contract<-> Budget Total

Indirect Cost<-> \$ 551,069

Employee Benefits<-> \$ 536,205

Area Agency on Aging<-> \$ 1,363,482

Job Training Partnership Act (JTPA) <-> \$ 684,924

JTPA Field Services <-> \$ 3,831,649

Criminal Justice Division Academy <-> \$ 181,105

Planning and Transportation <-> \$ 229,932

9-1-1 Planning and Implementation<-> \$ 1,570,818

Solid Waste Management<-> \$ 334,624

TOTAL<-> \$ 9,283,808

Issued in Austin, Texas, on August 1, 1997.

TRD-9710009

Terri Moore

Director of Personnel and Administrative Services

Permian Basin Regional Planning Commission

Filed: August 1, 1997



Texas Department of Public Safety

Local Emergency Planning Committee Hazardous Materials Emergency Preparedness Grants Request Proposals

INTRODUCTION: The Governor's Division of Emergency Management (DEM), acting for the State Emergency Response Commission (SERC), is requesting proposals for Local Emergency Planning Committee (LEPC) Hazardous Materials Emergency Preparedness (HMEP) grants to be awarded to Cities/Counties representing LEPCs to further their work in hazardous materials transportation emergency planning.

DESCRIPTION OF ACTIVITIES: LEPCs are mandated by the federal Emergency Planning and Community Right-to-Know Act (EPCRA) to provide planning and information for the community relating to chemicals in use, storage or transit. The U.S. Department of Transportation has made grant money available to enhance communities' readiness for responding to transportation hazardous materials incidents. A grant may be used by an LEPC in various ways, depending on a community's needs.

ELIGIBLE APPLICANTS: Each proposal must be developed by an LEPC, the membership of which is recognized by the SERC, in cooperation with county and/or city governments. The proposal must be approved by a vote of the LEPC. Each LEPC shall arrange for a city or county to serve as its fiscal agent for management of any and all moneys awarded under this grant.

CERTIFICATION: The fiscal agent must provide certification to commit funds for this project. The certification must be in the form of an enabling resolution from the county or authorization to commit funds from the city as appropriate.

BUDGET LIMITATIONS: Total funding for these grants is dependent on the amount granted to the state from the U.S. Department of Transportation. No less than seventy-five percent of the money granted to the state for planning will be awarded to LEPCs. This is the third of a series of annual grant awards which will be issued through FY 1998. Grants will be awarded based on population,

Hazardous Materials risk, need, and cost-effectiveness as judged by DEM. DEM will fund 80% of the total project cost. Twenty percent (20%) of the project cost must be borne by the grantee. Approved in-kind contributions may be used to satisfy this contribution. LEPCs must maintain the same level of spending for planning as the average of the past two years, in addition to the grant.

EXAMPLES OF PROPOSALS:

- Development, improvement, and implementation of emergency plans required under the Emergency Planning and Community Right-to-Know Act (EPCRA), as well as exercises which test the emergency plan. Improvement of emergency plans may include hazards analysis as well as response procedures for emergencies involving transportation of hazardous materials, including radioactive materials.
- An assessment to determine flow patterns of hazardous materials within a State, between a State and another State or Indian Country, and development and maintenance of a system to keep such information current.
- An assessment of the need for regional hazardous materials emergency response teams.
- An assessment of local response capabilities.
- Conducting emergency response drills and exercises associated with emergency preparedness plans.
- Technical staff to support the planning effort. (Staff funded under planning grants cannot be diverted to support other requirements of EPCRA.)
- Public outreach about Hazardous Materials Training issues such as community protection, chemical emergency preparedness, or response.
- Any other planning project related to the transportation of hazardous materials approved by DEM.

CONTRACT PERIOD. Grant contracts begin as early as December 15, 1997, and end August 15, 1998.

FINAL SELECTION. The DEM shall review the proposals. SERC Subcommittee on Planning will make final selection. The State is under no obligation to award grants to all applicants.

APPLICATION FORMS AND DEADLINE. The "Request for Proposals and Application Package" should be sent via certified/registered/ federal express, requiring a signature, to the Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0001. An application may be requested by calling DEM at 512/424-5985. The original and four copies of the completed application must be received at the above address by 5:00 P.M. on September 30, 1997. For further information, please call 512/424-5985.

Issued in Austin, Texas, on July 25, 1997.

TRD-9709967

Dudley Thomas

Director

Texas Department of Public Safety

Filed: August 1, 1997



Public Utility Commission of Texas

First Amended Petition of Southwestern Public Service Company for Authority to Surcharge Under-Recoveries of Fuel Expenses and for a Related Good Cause Waiver

On July 18, 1997, Southwestern Public Service Company filed with the Public Utility Commission of Texas, a first amended petition for authority to surcharge under-recovery of fuel and purchased power expenses and for a related good cause waiver. All classes of Southwestern Public Service Company's Texas retail customers will be affected by the proposed surcharge to recover approximately \$16 million. These charges will be subject to final review by the Public Utility Commission of Texas in Southwestern Public Service Company's next fuel reconciliation proceedings. Southwestern Public Service Company is also seeking a good cause waiver of PUC Substantive Rule 23.23(b)(3)(C)(v) to permit recovery of the surcharge over 12 months rather than in one lump sum. The petition has been designated Docket Number 17410.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, William B. Travis Building, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or contact the Public Utility Commission Office of Customer Protection at (512) 936-7120 within 15 days of the date of publication. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Public Utility Commission of Texas at (512) 936-7136. All correspondence should refer to Docket Number 17410.

Issued in Austin, Texas, on July 31, 1997.

TRD-9709960

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: July 31, 1997



Notices of Intent File Pursuant to PUC Substantive Rule 23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to PUC Substantive Rule 23.27 for an optional feature addition to the existing PLEXAR-custom service for Prairie View A&M University in Prairie View, Texas.

Tariff Title and Number: Application of Southwestern Bell Telephone Company for an Optional Feature Addition to the Existing PLEXAR-Custom Service for Prairie View A&M University in Prairie View, Texas, Pursuant to PUC Substantive Rule 23.27. Tariff Control Number 17747.

The Application: Southwestern Bell Telephone Company is requesting approval for an optional feature addition to the existing PLEXAR-custom service for Prairie View A&M University in Prairie View, Texas. The geographic service market for this specific service is the Houston local access and transport area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on August 1, 1997.

TRD-9710002

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: August 1, 1997

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Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to PUC Substantive Rule 23.27 for a new PLEXAR-custom service for the State of Texas Auditor in Austin, Texas.

Tariff Title and Number: Application of Southwestern Bell Telephone Company for a new PLEXAR-Custom service for the State of Texas Auditor in Austin, Texas, pursuant to PUC Substantive Rule 23.27. Tariff Control Number 17733.

The Application: Southwestern Bell Telephone Company is requesting approval for a new PLEXAR-custom service for the State of Texas Auditor in Austin, Texas. The geographic service market for this specific service is the Austin local access and transport area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on July 31, 1997.

TRD-9709962

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: July 31, 1997

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Notice of Workshop on NXX Exhaust Alternatives: Long-Term Solutions in NPA Relief Planning

The staff of the Public Utility Commission of Texas is hosting a workshop and industry panel discussion regarding long-term solutions for area code relief planning. The workshop is scheduled for Tuesday, August 26, 1997 from 1:00 p.m. to 5:00 p.m. in the commissioners hearing room at the Public Utility Commission, 7th floor, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78711-3326. Area codes across the country are exhausting, in part due to current NXX allocation practices that result in thousands of unused, but non-transferable, telephone numbers. A panel discussion among industry representatives and the staff will provide information on NXX allocation alternatives such as rate center consolidation, NXX auditing, number pooling, and transparent overlay systems. The staff intends to use information obtained through the workshop discussions to develop a recommendation on a specific long-term solution for NPA relief planning for consideration by the commission. All interested parties are invited to attend. For more information contact Ms. Jackie Follis at (512) 936-7358.

Issued in Austin, Texas, on August 1, 1997.

TRD-9710003

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: August 1, 1997

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NPA Relief Planning Meeting for the 214/281, and 512 Area Codes

The staff of the Public Utility Commission of Texas is holding the final core group meeting in Project Numbers 16899 - NPA Relief Planning for the 214/972 Area Codes; 16900 - NPA Relief Planning for the 713/281 Area Codes; and 16901 - NPA Relief Planning for the 512 Area Code from 10:00 a.m. to noon on Tuesday, August 26, 1997 in the commissioners' hearing room at the offices of the Public Utility Commission, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78711-3326. Staff will discuss comments received from the public hearings and provide for final consideration of the relief alternatives by the core group. All interested parties are invited to attend. For more information contact Ms. Jackie Follis at (512) 936-7358.

Issued in Austin, Texas, on August 1, 1997.

TRD-9709996

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: August 1, 1997

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Public Notice of Interconnection Agreement

On July 23, 1997, United Telephone Company of Texas, Inc. d/b/a Sprint and Central Telephone Company of Texas d/b/a Sprint (Sprint), and AT&T Wireless Services, Inc. (AT&T Wireless) collectively referred to as Applicants, filed a joint application for approval of an interconnection agreement under the Federal Telecommunications Act of 1996 (FTA) (47 United States Code §§151 et seq.) and the Public Utility Regulatory Act of 1995 (PURA95) (Texas Revised Civil Statutes Annotated article 1446c-0, Vernon 1997). The joint application has been designated Docket Number 17719. The joint application and the underlying master resale agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 18 copies of the comments with the commission's filing clerk. Additionally, a

copy of the comments should be served on each of the Applicants. The comments should specifically refer to Docket Number 17719. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by September 5, 1997, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the Applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 17719.

Issued in Austin, Texas, on July 31, 1997.

TRD-9709961

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: July 31, 1997



Texas Department of Transportation

Public Notice

In accordance with Title 43, Texas Administrative Code, §11.88(d)(2), the Texas Department of Transportation is publishing a Record of Decision (ROD) for the proposed construction of S.H. 161 from I.H. 20 to S.H. 183 in the Cities of Grand Prairie and Irving, Dallas County which was signed on April 7, 1997. By publication in the October 29, 1996, issue of the Texas Register, the department gave notice of the availability of the Supplemental Final Environmental Impact Statement and Final §4(f) Statement for the project. The 30 day comment period has expired and the following Record of Decision has been executed.

Decision: Based on the State Highway 161 (SH 161) Supplemental Final Environmental Impact Statement (SFEIS) and Final §4(f)

Statement, the Texas Department of Transportation (TxDOT) has determined that the proposed project is an appropriate course of action.

Alternative 2A is a new location 17.4 kilometer (10.8 mile) north-south four/six-lane controlled access freeway, with three-lane frontage roads. The four lane freeway would extend from Interstate Highway 20 (IH 20) to Interstate Highway 30 (IH 30); the six lane freeway would extend from IH-30 to State Highway 183 (SH 183), traversing through the Cities of Grand Prairie and Irving, Dallas County, Texas.

Since the original route study report in 1970 traffic demand in the SH 161 corridor has continued to increase. According to the Dallas-Fort Worth Regional Travel Model (DFWRTM), traffic projections for the year 2015 are anticipated to be 90,000 vehicles per day (from IH 20 to IH 30) and 150,000 vehicles per day (from IH 30 to SH 183). These projections indicate that a north-south facility is warranted in this corridor. Moreover, local governments have acknowledged the need for SH 161 to improve mobility for western Dallas County and fully support the project. Proposed SH 161 is a part of the thoroughfare plans of the Cities of Grand Prairie, Irving, and Dallas County.

As delineated in the SFEIS, SH 161 Alternative 2A would result in the fewest environmental and socio-economic impacts; 59 single family residences, 7 multi-family residences, 13 commercial/industrial operations, 2 places of worship, and a portion of C.P. Waggoner Park would be displaced. However, no disproportionately high or adverse effects on the human health or environment of minority or low-income population would result. No distinct neighborhoods or ethnic groups would be separated or isolated. Relocation assistance will be provided by the Texas Department of Transportation (TxDOT) in accordance with the provisions of the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

An air quality analysis was performed using the computer dispersion model CALINE3 for the staged-construction year 2010 and the year 2015 (the design year). The projected one-hour and eight-hour carbon monoxide (CO) concentrations were found to be below the National Ambient Air Quality Standards (NAAQS) as set by the Environmental Protection Agency (EPA).

The project is in both the conforming plan and transportation improvement program (TIP) with the same number of through travel lanes and as the same type of facility (freeway with interchanges and frontage roads) being approved by this record of decision (ROD). As required by the 1990 Clean Air Act Amendments (CAAA) §176(c)(4), an air quality conformity analysis was conducted for the long range transportation plan and TIP. The analysis verified that this transportation plan and TIP, which include this project, conform to the State Implementation Plan (SIP), therefore, this project conforms.

An update to the regional transportation plan, Mobility 2010: Plan Update has been prepared in response to the planning requirements of the Intermodal Surface Transportation Act of 1991 (ISTEA). A major emphasis of the Plan Update is management of the regional transportation system. The Plan Update is constrained to available financial resources and has been determined to conform based on requirements of the CAAA. Moreover, the 1996 Transportation Improvement Program (TIP) also conforms to the CAAA. SH 161 is included in the Plan Update and the 1996 TIP (modeled as a free facility) and is also consistent with the financial constraints of the Plan Update. The Plan Update and the 1996 TIP have been approved by

the Regional Transportation Council and endorsed by the Executive Board, acting together as the Metropolitan Planning Organization for the Dallas-Fort Worth Metropolitan Area. Mobility 2010 and the 1996 TIP were found to conform on January 12, 1996, by the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA).

An analysis of predicted highway traffic noise indicated SH 161 noise levels would approach or exceed the noise abatement criteria or result in a substantial increase above the ambient noise levels. Accordingly, noise abatement measures, including noise walls, were modeled and it has been determined that some noise walls are feasible. Final details of noise wall design cannot be determined until detailed roadway construction plans have been adequately prepared. At a later stage of project development, further public involvement will be conducted, and the decision to construct these noise walls will be made.

Within the project corridor, there are no structures listed in the National Register of Historic Places or designated as State Historic Landmarks. Two potential archaeological sites would be impacted: an historic farmstead within the Fish Creek drainage; and a prehistoric open campsite adjacent to Cottonwood Creek. In accordance with the Programmatic Agreement between the FHWA, the Advisory Council on Historic Preservation, the TxDOT, and the Texas Historical Commission, efforts to identify archaeological resources will continue to be undertaken for the selected alternative upon acquisition of right of way.

Coordination with the United States Army Corps of Engineers (USACE) has determined that a total of 0.9 acres of wetlands and 4.1 acres of jurisdictional waters of the United States would be impacted at various crossings along the project length. Because none of these sites are individually more than one-third acre in size or located above headwaters, the construction of SH 161 would be authorized by Nationwide permits under §404 of the Clean Water Act. The hydraulic design practices for SH 161 would conform to requirements of the Federal Emergency Management Agency and affected local governments.

All SH 161 route alternatives pass over or near property which is considered at risk of soil or water contamination by hazardous substances; however, an investigation revealed there was little variation in the number of potentially contaminated sites along the various route alternatives. A detailed site investigation for the preferred alternative revealed no evidence of significant contamination.

Alternatives Considered: In addition to the No-Build alternative, three main corridors and variations were examined in the SFEIS and Final §4(f) Statement. All Carrier Parkway Alternatives were designated with the number 1, Previously Studied Corridor Alternatives designated with the number 2, and Belt Line Road Alternatives with the number 3. Relative to other alternatives, Alternative 2A was found to: cause the fewest number of displacements and relocations; best serve the future predicted traffic needs; impact the fewest noise receivers; and be the least expensive route to construct. Additionally, Alternative 2A has the support of affected local governments; Alternative 2A was found to have impacts comparable to the other alternatives relating to: air quality, wetlands and jurisdictional waters, riparian woodlands, potential historical/archaeological sites; and potential hazardous waste sites. Based on the alternatives analysis for proposed SH 161 Alternative 2A will result in the least impacts to the human environment and is designated as both the Environmentally Preferred and Technically Preferred Alternative.

A Single Occupancy Vehicle (SOV) analysis was performed to investigate alternatives to building additional SOV lanes for SH 161. Various congestion reduction strategies were considered, including: operational improvements, traffic flow improvements, high occupancy vehicle lanes, improved transit service/facilities, commuter light rail service, congestion pricing, bicycle/pedestrian improvements, employer trip reduction programs, area-wide ride-sharing (car pooling and van pooling), and voluntary no-drive days. Of these measures, operational improvements, bicycle/pedestrian considerations, and travel demand management programs were determined feasible. Although these measures would potentially reduce the travel demand for SH 161, they do not eliminate the need for SOV lanes.

Improvements and congestion reduction strategies for comparable parallel facilities were also examined; however, none of the parallel facilities, individually or collectively could accommodate the traffic volumes projected for SH 161. The SH 161 project will meet the projected traffic and mobility needs.

Various meetings have been held to inform the public about proposed SH 161 and provide a forum for community discussion. In September 1986, two public meetings concerning the development of SH 161 were held in the Cities of Grand Prairie and Irving. In February/March 1990, five additional public meetings were held in Grand Prairie in the form of staff presentations to the City Council; all of these meetings were advertised and open to the public. On October 15, 1994, a formal public hearing was held, beginning at 6:00 p.m. and concluding at midnight. Detailed presentations were made on the project's location, design, and environmental impacts. In conjunction with this hearing, an open house was held from 10:00 a.m. to 6:00 p.m. the same day, providing detailed explanations of project information and answers to public questions and comments.

Section 4(F) and Measures to Minimize Harm: SH 161 Alternative 2A would require the use of 4.1 hectares (10.1 acres) of §4(f) property from the western side of C.P. Waggoner Park, a 25.3 hectare (62.4 acre) general use recreational park owned by the City of Grand Prairie. Of the nine route alternatives for SH 161, only 2F would not impact any §4(f) property; however, this alternative was rejected due to noise impacts and neighborhood impacts (Wedgewood Estates, Wild Rose Ridge, and Wildwood Oaks neighborhoods). Traffic noise generated by alternative 2F would adversely affect 14 neighborhoods and apartment communities. The Wildwood Oaks and Wild Rose Ridge neighborhoods community cohesion would be negatively impacted. In the vicinity of C.P. Waggoner Park alone, the Reorganized Church of Latter-day Saints and 58 single-family homes would be displaced to avoid taking parkland; these properties are valued at \$5,800,000.00. Since the inception of C.P. Waggoner Park, the park master plan included a reservation of land along the location of Alternative 2A for a transportation facility. For this reason, all essential park facilities are located outside this area. Even though C.P. Waggoner Park's master plan includes a reservation for highway right-of-way on the western side, a Mitigation Plan would be implemented. The Mitigation Plan will consist of: 25.1 hectare (62.1 acres) of replacement parkland; a recreation trail with amenities; extensive revegetation and landscaping; fishing ponds; and improvements to circulation roads and parking. The mitigation plan has been endorsed by the City of Grand Prairie. Based upon the results of the §4(f) evaluation, there is no feasible and prudent alternative to the use of land from C.P. Waggoner Park and the proposed action includes all possible planning to minimize harm to the C.P. Waggoner Park resulting from such use.

Other Impacts and Mitigation Measures: The loss of riparian woodlands and unregulated wildlife habitat caused by SH 161 would be minimized to the extent possible; however, some impacts would be unavoidable. To compensate for this loss, TxDOT has obtained an agreement with USACE to replant 11.1 hectares (27.4 acres) of trees and shrubs in Cedar Hill State Park. Native species having and habitat value to wildlife will be used.

Mitigation measures will be taken to eliminate or minimize impacts and public health concerns caused by hazardous waste/substances encountered during construction. Any areas of contaminated soil would be treated by means such as: vapor extraction, bioremediation, incineration, or disposal in a qualified landfill.

The construction of SH 161 would conform to TxDOT specifications and guidelines. Berms, dikes, dams, sediment basins, and other temporary and permanent erosion control measures would be used as necessary to protect water resources.

Approximately 600 acres of land will be converted from its present use (agricultural, residential, commercial/industrial, and municipal) to highway right-of-way. If a greater need arise for use of the land, or if the highway facility is no longer needed, the land can be converted to another use. Relocation assistance will be provided by the TxDOT in accordance with the provisions of the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

Monitoring or Enforcement Program: All commitments and conditions of approval stated in the SFEIS and Final §4(f) Statement will be monitored by TxDOT and other appropriate State, Federal and local agencies to insure compliance.

Comments On Supplemental Final Environmental Impact Statement and Final Section 4(F) Statement: This section summarizes the contents submitted after circulation of the SEIS and Final §4(f) Statement. Comments were received from two individuals. One comment concerned the number of proposed freeway lanes and suggested that TxDOT is evading the issue of conformity by actions to secure right of way for an 8/10 lane freeway while stating that only a 4/6 lane freeway will be constructed in an effort to avoid the requirements of the Clean Air Act. The comment also suggested that TxDOT plans to avoid preparation of an environmental analysis for a presumably future 8/10 lane freeway upgrade.

The transportation needs documented in the Mobility 2010 Plan Update identify an 8/10 lane freeway with 6-lane frontage roads as needed; however, financial constraint requirements must balance needs with available funds. Accordingly, the Mobility 2010 Plan Update includes a 4/6 lane freeway with 6-lane frontage roads. This 4/6 lanes was - and is - the basis of the air quality conformity analysis. This projects SFEIS addresses the impacts of preserving a corridor (right of way) for future needs sufficient to accommodate an 8/10 lane freeway. Impacts associated with this footprint were examined. While beyond the scope of the proposed action, the SFEIS examined the impacts associated with an 8/10 lane freeway for the alternatives considered. Before the project could be constructed to an 8/10 lane freeway, the metropolitan transportation plan and TIP (in existence at that time) and the project for the additional lanes will need to be amended and subsequently subjected to the air quality conformity analysis provisions of the Clean Air Act Amendments and the National Environmental Policy Act (NEPA) process. The right-of-way acquisition for the project includes the preservation of the corridor for projected transportation needs.

Another comment indicated that the increase in air pollution resulting from the project—especially project construction, will only add to the total ozone burden of the region. The Dallas-Fort Worth Metropolitan Area has been designated as an ozone non-attainment area. Because it is a non-attainment area, a conformity determination, as required by the 1990 CAAA §176(c)(4), was made for the plan and TIP. The analysis verified that this plan and TIP, both of which include the project, are consistent with the air quality conformity and the air quality State Implementation Plan. The project is both in the conforming plan and TIP with the same number of through travel lanes and as the same type of facility (freeway with interchanges and frontage roads) being approved by this Record of Decision. Therefore, this project conforms.

An update to the regional transportation plan, Mobility 2010 (Plan Update) was prepared in response to the planning requirements of the ISTEA of 1991. A major emphasis of the Plan Update is management of the regional transportation system. The Plan Update is constrained to available financial resources and has been determined to conform based on requirements of the CAAA. Moreover, the 1996 TIP also conforms to the CAAA. The Plan Update and the 1996 TIP were found to conform on January 12, 1996 by the FHWA and FTA. SH 161 is included in the Plan Update and the 1996 TIP (modeled as a non-toll facility) and therefore SH 161 conforms. The Plan Update and the 1996 TIP have been approved by the Regional Transportation Council and endorsed by the Executive Board, acting together as the Metropolitan Planning Organization for the Dallas-Fort Worth Metropolitan Area. Subsequent to the issuance of the SFEIS; Mobility 2020, the Metropolitan Transportation Plan, (Mobility 2020) has been approved by the MPO. It has been determined by the FHWA (FHWA is acting as executive agent for FTA on plan and TIP air quality conformity determination) to conform, in accordance with the CAAA of 1990. There is no change in the design concept and scope of SH 161 as a result of Mobility 2020. The Mobility 2002 does not affect the validity of the findings of the SFEIS. In conclusion, the proposed action conforms to all current Federal requirements regarding air quality.

Conclusion: State Highway 161 Alternative 2A includes the construction of a controlled-access freeway with four and six main lanes with three frontage roads on each side. The limits of the four-lane freeway are from IH-20 to IH-30, and the limits of the six-lane freeway are from IH-30 to SH 183. Based on the SFEIS, and §4(f) evaluation, the selected alternative is 2A. This alternative is described in Volume I, Chapter IV of the SFEIS. It is also determined, based on the SFEIS and §4(f) evaluation, that there is no feasible and prudent alternative to the use of land from C.P. Waggoner Park required by Alternative 2A and the proposed action includes all possible planning to minimize harm to the C.P. Waggoner Park resulting from such use.

Issued in Austin, Texas, on August 1, 1997.

TRD-9710046

Robert E. Shaddock

General Counsel

Texas Department of Transportation

Filed: August 1, 1997

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The University of Texas System

Request for Proposal

The 75th Legislature of the State of Texas passed Senate Bill 606 which authorizes The University of Texas System to create a regional academic health center, which is described in the Bill, within a four county area in the Lower Rio Grande Valley (Cameron, Starr, Hidalgo, and Willacy Counties). In order to accomplish this task, it will be necessary for the University to receive a donation of an acceptable site for the new facility. The University wishes to use an impartial competitive process to identify the best site from any potential sites which are offered as gifts for the purpose of locating the center. The University of Texas System requests, pursuant to the provisions of Texas Government Code, Chapter 2254, a submission of a proposal to award a contract for a consultant to administer the impartial site selection process for the Board of Regents of The University of Texas System.

The consultant shall perform the following services:

- 1) Prepare a Request for Proposal to be used to solicit proposals for the purpose of identifying the best site for The University of Texas to locate a regional academic health center in Cameron, Hidalgo, Starr, or Willacy Counties as mandated in Senate Bill 606 of the 75th Legislature of the State of Texas.
- 2) Oversee the administration of the RFP process to generate responses from qualified respondents.
- 3) Receive and certify those proposals which meet the criteria specified in the RFP which is prepared by the Contractor.
- 4) Evaluate the proposals which comply with the requirements of the RFP and rank all of those proposals from the best to worst using a process which assigns a numerical value for each selection criteria and response.
- 5) Deliver a written report on the proposals received and the outcome of the ranking process under items 3 and 4 above to the Executive Vice Chancellor for Health Affairs.
- 6) Be available to make one or more presentations detailing the considerations involved in the development of the RFP, the administration of the solicitation process, and the evaluation of the proposals which were received in a meeting with administrative officials of The University of Texas System.

The criteria for evaluation of proposals, and selection of the successful respondent for this award, will be based on the factors listed below:

- 1) The soundness of the respondent's approach to conducting the RFP process for the purpose of identifying the best location for the creation of a regional academic health center in the Lower Rio Grande Valley as mandated in Senate Bill 606 of the 75th Session of the Legislature of the State of Texas.
- 2) The respondent's demonstrated competence and experience with conducting site selection processes.
- 3) The respondent's knowledge of current conditions, demographics and the health care industry within the target region.
- 4) The respondent's awareness of future directions of the health care education as well as other relative fields that may be applicable to University.
- 5) The qualifications, education, and experience of the team members proposed to conduct the request for proposal process.

- 6) Respondent's experience performing the requested services for other complex institutions or systems of higher education.
- 7) The overall cost to University for the services to be performed.
- 8) The quality of references from past customers of respondent.
- 9) Respondent's demonstrated capability and financial resources to perform the work in the time projected.
- 10) Respondent's response to Sections 7 (Pricing and Delivery Schedule) and 8 (Respondent Questionnaire) of the RFP.
- 11) Respondent's demonstrated communications skills using all relevant media.

Organizations or individuals interested in receiving a request for proposal should contact James S. Wilson, Executive Director, Real Estate, The University of Texas System, 210 West 6th Street, Austin, Texas, 78701, (512) 499-4388. Proposals will be accepted until 4:00 p.m. CDT, Friday, September 12, 1997. Proposals received late for any reason will be returned unopened.

Issued in Austin, Texas, on July 30, 1997.

TRD-9709909

Arthur H. Dilly

Executive Secretary to the Board of Regents

The University of Texas System

Filed: July 31, 1997



Texas Workforce Commission

Request for Proposals

FUNCTIONAL LITERACY ASSESSMENT FOR TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)/JOB OPPORTUNITIES AND BASIC SKILLS TRAINING (JOBS) PROGRAM PARTICIPANTS

The Texas Workforce Commission (TWC) invites proposals for the Functional Literacy Assessment for Temporary Assistance for Needy Families (TANF)/Job Opportunities and Basic Skills Training (JOBS) Program Participants. TWC is responsible for setting the requirements for the local TWC offices and workforce development boards concerning conducting literacy assessments as part of the employability assessment for TANF recipients in the JOBS Program. In House Bill 1863, Article 3.01 amended the Human Resource Code to specify that in imposing time limits, the Department of Human Services (DHS) must consider "the assessment of the individual's need that was conducted by the department, provided that if the needs assessment indicates discrepancies between a client's self-reported educational level and the client's functional abilities, the time limits shall be based upon the functional educational level." The purpose of this proposal is to purchase an instrument that will be used! state wide to assess the functional literacy/educational level of TANF recipients who participate in the JOBS Program.

AUTHORIZATION OF FUNDING:

The funds for the Functional Literacy Assessment are authorized under the FY 1998 Appropriations Bill for the Department of Health and Human Services, Temporary Assistance for Needy Families (TANF). Funds are subject to the requirements of the Title VI Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).

SERVICE DESCRIPTION:

SCREENABLE REQUIREMENTS:

The successful bidder must provide a literacy assessment instrument that meets the following screenable requirements:

The assessment results are reported in terms of grade level or educational level equivalents - Contains both reading and math components, with a composite score/grade level and was developed for use with adults and provides reliability and validity data.

OBJECTIVES:

The successful bidder must provide a literacy assessment instrument that meets the following criteria:

Reasonable cost

Total administration time not to exceed 2 hours

Easy to administer, score and interpret - appropriate for use by staff with varying levels of expertise and knowledge in assessment, and administered in group setting

Scoring - if vendor scoring is used, time frame for scores and reports to be received from vendor not to exceed 7 workdays, and if site scoring is used, either software or scoring keys for hand scoring is supplied

Provides alternate (or parallel) forms for retesting

Consideration would be weighted toward an instrument that measures employment-related skills as long as the reports also include a grade level or educational level equivalency

Consideration would be weighted toward an instrument with other versions (i.e., other languages or large print versions)

PROJECT DESIGN REQUIREMENTS:

Potential offerors must be able to supply the following required elements on an on-going basis:

All test supplies and record keeping on orders placed

Administration manuals

Vendor scoring or scoring software

Individual and composite reports on test takers, or reporting software

Complete training on administration, scoring and interpretation of results

Guide for interpretation and use of results or User's Guide

Ongoing technical assistance and support

PRIMARY CONTRACTOR CAPABILITIES:

A successful offeror is expected to demonstrate the following primary capabilities:

To receive orders for test instruments from Local Workforce Development Boards and local TWC offices on an as-needed basis - to bill TWC state office for total instruments ordered according to a negotiated schedule, and to maintain records to support billing

To report results of components in a single grade level must be able to distinguish test takers at high school completion level, at 11th grade completion level and below 11th grade completion

To provide technical assistance in a timely manner

LENGTH OF CONTRACT:

The procurement process will be completed August 20, 1997 for an immediate implementation. The proposed contract period is August 20, 1997 through August 31, 1998.

SELECTION, NOTIFICATION, AND NEGOTIATION PROCESS:

Proposals will be graded by both the Texas Workforce Commission and outside readers. Grading criteria will be included in the grant applicant packet. The Texas Workforce Commission anticipates completing the selection and notifying applicants of their application status the week of August 18, 1997. The selection process will be based upon proposal scores. Negotiation will take place immediately after selection. A designated person from the selected entity must be readily available to respond to budget and/or programmatic requested revisions between August 18-20, 1997. If a designated person is not readily available to promptly respond to requested revisions, the contract will not be awarded to the applicant.

Negotiations will be conducted by TWC as deemed necessary. TWC reserves the right to vary all provisions of this RFP prior to the execution of a contract and to execute amendments to contracts when TWC deems such variances and/or amendments are in the best interest of the State of Texas.

DUE DATE AND AGENCY CONTACT:

The deadline for receipt and consideration of the Functional Literacy Assessment proposal is 5:00 P.M., Thursday, August 14, 1997. For further information and to order an Application Packet, contact Marilyn Wesson, Texas Workforce Commission, Welfare-to-Work/Special Initiatives, 101 East 15th Street, Room 416T, Austin, Texas 78778-0001. Phone 512/936-3156 or 512/936-3148, FAX: 512/936-3223 or 512/463-9994.

A notice of the award decision will be published in the *Texas Register* following contract execution.

TWC's OBLIGATIONS:

TWC's obligations under this RFP are contingent upon the actual receipt by the Agency of funds from the U.S. Department of Health and Human Services. If adequate funds are not available to make payment under this grant, TWC shall terminate this RFP and will not be liable for failure to make payments to applicants under this RFP.

Issued in Austin, Texas, on August 1, 1997.

TRD-9710024

J. Ferris Duhon

Legal Counsel

Texas Workforce Commission

Filed: August 1, 1997

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